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Yes / No

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IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

High Court Review Case No: 91\06
Magistrate Case No: 1980\05
Date delivered: 2006-06-19

In the review matter of:

THE STATE

versus

MOSES MAITLAND

ACCUSED

Coram: MAJIEDT J *et* VAN NIEKERK AJ

JUDGEMENT ON SPECIAL REVIEW

MAJIEDT J:

1. This matter has been submitted on Special Review by the magistrate at Warrenton with a request that the matter be remitted for the proper sentencing of the accused.

2. The accused was charged with theft of cheese to the value of R12,50. He was legally represented on legal aid instructions.
3. The accused pleaded guilty to theft as charged and on his behalf his attorney confirmed that the aforementioned plea was in accordance with the instructions from the accused. The attorney requested that the magistrate finalise the matter in terms of the provisions contained in section 112(1)(a) of the Criminal Procedure Act, 51 of 1977 (*“the Act”*). The prosecutor indicated that he accepted the plea in terms of the aforementioned section 112(1)(a). Thereafter the accused was formally convicted under that section.
4. No previous convictions were proved against the accused, an 18 year old unemployed youth. The magistrate then proceeded to sentence the accused to 3 months imprisonment, suspended for 5 years on condition that he is not convicted of theft committed during the period of suspension.
5. The magistrate correctly indicates in her memorandum submitting the matter on review that the aforementioned sentence does not accord with the provisions contained in section 112(1)(a) of the Act. That section provides that any competent sentence may be imposed in terms thereof, **other than** imprisonment or any other form of detention without the option of a fine or a fine exceeding

the amount of R1500.00 as has presently been determined by the Minister in the Government Gazette.

6. Consequently the sentence must be set aside so that a proper sentence can be imposed as provided for in section 112(1)(a)(i) of the Act.

7. The following order is issued:

The matter is remitted to the magistrate at Warrenton for a proper sentence to be imposed as provided for in section 112(1)(a)(i) of Act 51 of 1977.

**SA MAJIEDT
JUDGE**

I concur.

**JG VAN NIEKERK
ACTING JUDGE**