

**IN THE HIGH COURT OF SOUTH AFRICA****(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

A556/2010

5 **DATE:**

19 NOVEMBER 2010

In the matter between:

**RASHAAD ABDUL**

Appellant

and

10 **THE STATE**

Respondent

---

**J U D G M E N T**15 **ERASMUS, J:**

This matter is before us on appeal. The appellant was convicted and sentenced on 16 April 2003 and sentenced to a term of 15 years imprisonment. Very little is said in the record  
20 as to why there was a lapse of a period of over six years before leave was granted. It seems as if the record of proceedings of the court *a quo* had gone missing.

I have a concern about the records in the Regional Court going  
25 missing, as this is not the first, and I take it will not be the last  
/bw

/...

of these matters, and it seems that in most of these matters the appellants bring their appeals late. Irrespective of the ultimate order of this Court, I would urge the Department of Justice to urgently look into the archiving of records in criminal  
5 matters where people were sentenced to a long term imprisonment.

I now turn to the appeal itself. On the sentence issue, the magistrate was unable to reconstruct the record and,  
10 therefore, was unable to comment on the sentence imposed. We are in a similar position. We do not have sufficient information before us to deal with the sentence. I believe it is in the interest of justice that the imposed sentence be set aside and the matter be referred back to the trial court to  
15 consider sentence afresh. The order that I make is the following:

1. The conviction is confirmed.
- 20 2. The imposed sentence of 16 April 2003 is set aside.
3. The matter is referred to the Regional Court to consider sentence afresh.
- 25 4. The appellant shall remain in custody, of course now as

an awaiting trial prisoner, if he his not serving any other sentence, until such time that he is brought before the Regional Court magistrate.

5 That is the order of the Court.

A handwritten signature in dark ink, appearing to be 'ERASMUS, J', is written over a horizontal dashed line.

10

ERASMUS, J

KUSCHKE, AJ: I agree.

15

A horizontal dashed line, likely a placeholder for a signature.

KUSCHKE, AJ