

SOUTH AFRICA / JUDGMENT

Mofoka v S (A198/2022) [2022] ZAGPPHC 631 (16 August 2022) [2022] ZAGPPHC 631

COURT

North Gauteng High Court, Pretoria

BEFORE

Van Wyk, De Vos

CASE / FILE NUMBER

A198/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Review

Judgment No:A198/2022

REPORTABLE:

YES

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

16

AUGUST 2022

In

the matter between

THABANG

ELIZABETH MOFOKA

and

THE

SATE

REVIEW

JUDGMENT

Van Wyk AJ

[1] This is a special review in terms of section 304(4) of the Criminal Procedure Act, Act 51 of 1977 submitted to this Court by the sentencing magistrate.

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF GAUTENG HELD AT FOCHVILLE
SHFS/22

In the matter between:

The State

And

Thabang Elizebeth Mofoka

SPECIAL REVIEW

Accused was sentenced on 28 June 2022 after she pleaded guilty to both charges and was found guilty of two counts of contravening section 305(3)(a) of the Children's Act 38 of 2005 namely child neglect.

Both charges were taken together for the purpose of sentence and accused was wrongly sentenced to 5 (five) years Correctional supervision in terms section 276(1)(h) of the Criminal Procedure Act 51 of 1977.

It is humbly requested that the sentence be altered to 3 (three) years Correctional Supervision in terms of Section 276(1)(h) of Act 51 of 1977.

The oversight is regretted.

Adele Maass

Acting Regional Magistrate

Fochville

[2] The matter originates from the lower court where the accused pleaded guilty in terms of section 112(2) of Act 51 of 1977 on two counts of contravening section 3Q5(3)(a) of the Children's Act, Act 38 of 2005 - child abuse and/or neglect.

[3] The charges were taken together for the imposition of sentence and the following sentence was imposed by the lower court, after a pre-sentence report, a Correctional Supervision report and a Victim-Impact report was submitted:

"In terms of section 276(1)(h) of the CPA 51 of 1977 sentenced to five

[5] years correctional supervision which includes house detention as well as community service and taking part in treatment, development and support programmes as well as mediation and restorative justice."

[4] The sentencing magistrate in a memorandum attached to the review record, requested that the period of correctional supervision is altered to three (3) years of correctional supervision in terms of section 276(1)(h) of Act 51 of 1977.

[5] Section 305(6) of Act 38 of 2005 provides as follow:

"Subject to subsection (8), a person convicted of an offence in terms of subsection (1), (2), (3), (4) and (5) is liable to a fine or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment."

[6] The magistrate imposed a sentence of correctional supervision, which is provided for in terms of section 276(3)(b) of Act 51 of 1977:

"Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court from imposing the punishment referred to in subsection (1)(h) or (i) in respect of any offence, whether under the common law or a statutory provision, irrespective of whether the law in question provides for such or any other punishment: Provided that any punishment contemplated in this paragraph may not be imposed in any case where the court is obliged to impose a sentence contemplated in section 51(1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997."

[7] Section 276A(1) of Act 51 of 1977 provides as follow:

"Punishment shall, subject to the provisions of section 75 of the Child Justice Act, 2008, only be imposed under section 276(1)(h)-

- (a) after a report of a probation officer or a correctional official has been placed before the court; and
- (b) for a fixed period not exceeding three years, or in the case of a conviction for any offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), for a fixed period not exceeding five years.

[8] The magistrate thus exceeded her sentencing jurisdiction with two (2) years.

[9] Section 304(4) of Act 51 of 1977 provides as follow:

"If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the

proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section."

[10] The sentence imposed in not in accordance with justice as the magistrate exceeded her sentencing jurisdiction by two (2) years.

[11] Section 304(2)(c)(ii) of Act 51 of 1977 sets out the procedure on review in this particular instance and provides as follow:

"Such court, whether or not it has heard evidence, may, subject to the provisions of section 312 confirm, reduce, alter or set aside the sentence or any order of the magistrate's court;"

[12] Subsequently, the sentence imposed by the lower court is set aside and altered to read as follow:

ORDER:

"In terms of section 276(1)(h) of the CPA 51 of 1977 sentenced to three

(3) years correctional supervision which includes house detention as well as community service and taking part in treatment, development and support programmes as well as mediation and restorative justice."

LA van Wyk AJ

Acting Judge of the High Court of South Africa

North Gauteng Division, Pretoria

I agree and it is so ordered.

H De Vos J

Judge of the High Court of South Africa

Date of delivery: 16 August 2022

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