

SOUTH AFRICA / JUDGMENT

S v Cacambile (CA&R19/17, 22/17) [2017] ZAECHHC 6; 2018 (1) SACR 8 (ECB) (14 September 2017) [2017] ZAECHHC 6

COURT

Eastern Cape High Court, Bhisho

BEFORE

I.T. Stretch, D. Van Zyl

CASE / FILE NUMBER

CA&R19/17, 22/17

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, BHISHO

CASE NO: CA&R 19/17

REVIEW CASE NO: 22/17

In the matter between:

THE STATE and MZOXOLO CACAMBILE Accused

REVIEW JUDGMENT

STRETCH J:

- [1] On 16 August 2017 the Alice magistrate convicted the accused of assault with intent to do grievous bodily harm, and, applying the provisions of section 77(6)(a)(i) of the Criminal Procedure Act 51 of 1977 (“the Act”), ordered that he be detained at Fort Beaufort Mental Hospital pending a decision by a judge in chambers in terms of section 47 of the Mental Health Care Act 17 of 2002. The court recorded that the matter was subject to automatic review, as provided for in section 302 of the Act.
- [2] This is not correct. An order for the detention of an accused person pending a judge’s decision is not a sentence and as such is not automatically reviewable. If, however, a magistrate has reason to believe that there may be a problem in a particular case, he is free to submit the matter for review and the High Court will exercise its powers of review if necessary (S v Zondi 2012 (2) SACR 445 (KZP)).

- [3] In the matter before us the magistrate sent the matter on automatic review under cover of an opinion that the proceedings were not in accordance with justice. For the reasons which follow, I agree that the proceedings were not in accordance with justice. In the circumstances the magistrate's assumption that the matter is automatically reviewable, is irrelevant.
- [4] The magistrate's order is based on a psychiatric report dated 26 May 2017 signed by three psychiatrists who apparently observed the accused at Fort England Hospital during the period 11 to 22 May 2017.
- [5] At the conclusion of the period of observation, they diagnosed the accused as schizophrenic with alcohol and cannabis abuse. In terms of section 79(4)(c) of the Act, they found that the accused was unable to follow court proceedings so as to make a proper defence. In terms of section 79(4)(d) they also concluded that although the accused was able to appreciate the wrongfulness of his conduct at the time of the alleged offence, he was unable to act in accordance with an appreciation of the such wrongfulness. Accordingly, they recommended that the accused be admitted to Fort England Hospital as a State patient in terms of chapter VI of the Mental Health Care Act.
- [13] The magistrate in these proceedings made a factual finding that the accused committed the offence of assault with intent to do grievous bodily harm. There is nothing before me to suggest that the magistrate did so as a consequence of having been informed about any admissible evidence to support such a conclusion. Indeed, it seems that no such information was placed before the court. In the absence of such information or evidence, the finding constitutes a material misdirection which has the effect of vitiating the proceedings.
- [14] The record must show whether any facts were presented to the presiding officer, enabling him to determine and find whether the accused committed the actus reus complained of (see *S v Sika* 2010 (2) SACR 406 (ECB) at 408a-b). It seems to me from the ruling, that the magistrate did not convict the accused as recorded in the J4 but merely found that he committed the offence in question. This finding would have been a proper one had the court been apprised of information or evidence to support such a finding. Not only was this not done, but the review cover sheet suggests that the accused was convicted and sentenced. This is confusing. The portions of the standard form J4 for review proceedings relating to conviction and sentence should not be completed by rote in matters of this nature.
- [15] A last aspect that deserves mention is the wording used in the ruling, the charge sheet and the review referral cover sheet. Throughout, reference is made to the accused being detained at a 'mental' hospital pending a judge's decision in terms of section 47 of the Mental Health Care Act [or] until a further lawful order is given for the accused's 'disposal'. Lawyers are encouraged to use the term 'psychiatric hospital' or 'institution' instead. I am not sure what the word 'disposal' is intended to convey. My interpretation is that is simply offensive. The literal meaning of the word as a noun is the action or process of getting rid of

something, especially by throwing it away. It is inappropriate to use such wording with respect to a person.

[16] I make the following order:

- (a) The magistrate's order dated 16 August 2017 recorded on the face of the J15 is set aside.
- (b) The matter is remitted to the magistrate to make a determination pursuant to the relevant provisions of section 77 of the Criminal Procedure Act 51 of 1977, and to issue such order and directive thereupon as is appropriate in the circumstances.
- (c) Arrangements must be made for the accused to be provided with the services of a legal practitioner as envisaged in section 77(1A) of Act 51 of 1977.

I.T. STRETCH

HIGH COURT JUDGE, BHISHO

14 September 2017

I agree:

D. VAN ZYL

DEPUTY JUDGE PRESIDENT, BHISHO

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECBHC/2017/6.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-cacambile-unknown-topic-aecbhc-2017>

Prepared on 9 October 2026 · Esheria