

SOUTH AFRICA / JUDGMENT

S v Jack (562/15) [2015] ZAGPPHC 888 (3 November 2015)

[2015] ZAGPPHC 888**COURT**

North Gauteng High Court, Pretoria

BEFORE

Tuchten, M Ismail

CASE / FILE NUMBER

562/15

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Source record**IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG DIVISION,****PRETORIA****CASE NO: 562/15****DATE: 03 NOVEMBER 2015**

In the matter between:

THE STATE

And

DINEO

JACK.....Accused

JUDGMENT

Tuchten J:

1 This matter comes before me on special review. The accused was charged in a magistrate's court with the crime of theft. The charge sheet reflected the age of the accused as 19. She pleaded guilty and was duly convicted upon her plea. However, when the court was investigating facts relevant to the imposition of a proper sentence, it emerged that the accused was only seventeen years old.

2 When the magistrate realised that the accused was below the age of 18 years, she adjourned the case and referred it to this court. The magistrate submitted out that under s 5(3) of the Child Justice Act, 51 of 1977 (the CJA), where a child is charged with an offence a preliminary enquiry must be held before the criminal proceedings can lawfully proceed.

3 Sections 5(1) to (3) of the CJA provide:

- (1) Every child who is alleged to have committed an offence and is under the age of 10 years, must be referred to a probation officer to be dealt with in terms of section 9.
- (2) Every child who is 10 years or older, who is alleged to have committed an offence and who is required to appear at a preliminary inquiry in respect of that offence must, before his or her first appearance at the preliminary inquiry, be assessed by a probation officer, unless assessment is dispensed with in terms of section 41 (3) or 47 (5).
- (3) A preliminary inquiry must be held in respect of every child referred to in subsection (2) after he or she has been assessed, except where the matter-
 - (a) has been diverted in accordance with Chapter 6;
 - (b) involves a child who is 10 years or older but under the age of 14 years where criminal capacity is not likely to be proved, as provided for in section 10 (2) (b); or
 - (c) has been withdrawn.

4 It is thus incumbent on a court before whom a child older than the age of 10 appears to hold a preliminary enquiry under s 5(3) and to ensure that before the enquiry commences, the child has been assessed by a probation officer unless such assessment has been dispensed with under s 41(3) or 47(5).

5 Because the magistrate's court is a creature of statute, that court cannot rescind its own criminal convictions. It therefore follows that the magistrate acted correctly in referring the matter to this court when the magistrate learnt of the child's true age. In my view, this conclusion is so self-evidently correct and delay so manifestly prejudicial to the child that I have dispensed with the practice of asking the Director of Public Prosecutions for his view.

6 I make the following order:

1 The conviction of the child Dineo Jack in the Oberholzer magistrate's court under case no. B1013/2015 is hereby set aside.

2 The case is remitted to the magistrate, Oberholzer, to be dealt with in terms of s 5 of the Child Justice Act, 51 of 1997 and otherwise in accordance with law.

NB Tuchten Judge of the High Court 30 October 2015

I agree.

M Ismail Judge of the High Court 14 October 2015

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