

SOUTH AFRICA / JUDGMENT

S v K.D (B541/2020) [2021] ZAWCHC 10; 2021 (1) SACR 675 (WCC) (2 February 2021)

[2021] ZAWCHC 10

COURT

Western Cape High Court, Cape Town

BEFORE

Lekhuleni

CASE / FILE NUMBER

B541/2020

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In the High Court of**South Africa****(Western Cape****Division, Cape Town)****Case****No: High Court Ref No. 12/21****Magistrate's****Serial No: 01/2020****Case****No. B541/2020****In****the matter**

between:

THE

STATE

and

KD Accused

JUDGMENT

LEKHULENI AJ

INTRODUCTION

- [1] This case comes before me by way of review in terms of section 85 of the Child Justice Act (“the CJA”) read with Chapter 30 of the Criminal Procedure Act 51 of 1977 (“the CPA”). The accused is a child offender who was 14 years old at the time of the commission of the offence

and was 15 years at the time of sentencing. He was convicted on the 26 November 2020 by the District Court sitting at Strand on a charge of Possession of a Firearm in contravention of section 3 read with Schedule 4 and section 151 of the Firearms Control Act 60 of 2000 (“the Firearm’s Control Act”). He was subsequently sentenced to 12 months compulsory residence in a child and youth care center providing programs referred to in section 191(2)(j) of the CJA. This matter is subject to automatic review in terms of the provisions of section 85 of the CJA. Essentially, this court is enjoined to consider whether the proceedings before the trial magistrate appear to be in accordance with justice.

FACTUAL BACKGROUND

[2] The state alleged that upon or about 25 June 2019 and at or near 11th Street Strand the accused did unlawfully have in his possession a Gecado Revolver without holding a licence, permit or authorization

issued in terms of the Firearms Control Act to possess that firearm. The accused was legally represented by an attorney and assisted by his mother throughout the proceedings. He pleaded guilty to the charge and made a statement in terms of section 112(2) of the CPA upon which his plea was based.

[3] The facts gleaned from his statement were that on the 25 June 2020 (sic) (should be 2019) he was walking on the Eleventh Street in Strand on his way to a shop. He knew that it was dangerous in the area and he had the Gecado Revolver with serial number 399725 in his possession. He kept the said firearm in his waist. He received the firearm from a friend and took it for safe keeping. Whilst walking to the shop, he saw a police van which was patrolling the area and he

ran away and this raised suspicion. The Police caught him, searched him and found the firearm in his possession. He did not have a licence or permit to possess the firearm in question.

[4] The accused confirmed the contents of his statement. The accused was subsequently convicted as charged. The Probation Officer Mr E Smith compiled a pre-sentence report. In his report, the Probation Officer alluded to the fact that the accused was a first offender. His parents are not married. The accused’s parents lived together until 2014 when they separated. The accused and his mother moved in to live with his maternal family. The accused however has a good relationship with his father. The accused was enrolled at Gordon Senior Secondary School and was in Grade 9 until May 2019 when he absconded from school out of his own free will. The accused consumes alcohol on social basis after being introduced to substance by his friends. The Probation Officer recommended that the court sentence the accused to compulsory residence in terms of section 76(1) of the CJA. The Probation Officer also recommended that if the court was inclined to impose such a sentence, the accused should among others, attend life orientation programs, academic and vocational programs.

- [5] Following these recommendations, the court subsequently sentenced the accused in terms of section 76(1) of CJA to compulsory residence at Horrison child and youth care center for a period of 12 months. In terms of section 76(4)(b) of the CJA, the court further ordered that the order must be brought to the attention of all relevant functionaries in the prescribed manner. The Court also ordered that the head of the child and youth care center Morne Johnson, must on the child's completion of the sentence, submit a report to the Child Justice Court which imposed the sentence, containing his or her views on the extent to which the relevant objectives of sentencing referred to in section 69 have been achieved and the possibility of the child's reintegration into society without serving the additional terms of imprisonment not later than six weeks before the child completes his or her sentence. In terms of section 103(2) of the Firearms Control Act, a consequential order was made to the effect that the accused is unfit to possess a firearm.
- [6] The record of proceeding was transmitted and received by this court on 25 January 2021. After perusing the record, I was concerned with the sentence imposed by the learned magistrate as well as the ancillary order made. In particular, I was concerned whether the court in sentencing the accused complied with the provisions of Chapter 10 of the CJA, in particular, if there was compliance with section 69(1)(a-e) and section 69(3). I was also concerned whether the court considered other sentencing options enshrined in sections 72, 74 and 75 of the Child Justice Act. I was also deeply troubled with the ancillary order made by the magistrate in terms of section 103(2) of the Firearms Control Act.
- [1] Section 69(3), of the CJA enjoins courts when considering the imposition of a sentence involving compulsory residence in a child and youth care centre in terms of section 76, a child justice court must, in addition to the factors referred to in subsection (4) relating to imprisonment, consider the following into account:
- (a) whether the offence is of such a serious nature that it indicates that the child has a tendency towards harmful activities;
 - (b) whether the harm caused by the offence indicates that a residential sentence is appropriate;
 - (c) the extent to which the harm caused by the offence can be apportioned to the culpability of the child in causing or risking
- the harm; and (d) whether the child is in need of a particular service provided at a child and youth care centre.

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Prepared on 10 October 2026 · Esheria