

SOUTH AFRICA / JUDGMENT

S v Kobe (B180/23) [2024] ZAGPJHC 50 (26 January 2024) [2024] ZAGPJHC 50

COURT

South Gauteng High Court, Johannesburg

BEFORE

Mudau, Ismail

CASE / FILE NUMBER

B180/23

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: B180/23

MAGISTRATE'S SERIAL NO: 7/23

HIGH COURT REF NO: 50/23

In the matter between:

THE STATE

and

KOBE, WILLIAM

ACCUSED

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and to saflii. The date and time for hand down is deemed to be 10h00 on 26 January 2024.

Criminal procedure- special review- sentence by a district magistrate set aside- the proceedings are stopped, and the accused is committed for sentence by a regional court having jurisdiction.

REVIEW JUDGMENT

MUDAU, J (Ismail J concurring):

- [1] The matter has been placed before me for special review in terms of section 304 (4) of the Criminal Procedure Act, 51 of 1977 (the CPA), at the instance of the trial magistrate, Westonaria. Section 304(4) of the CPA provides as follows —

“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.”

- [2] The relevant background facts are as follows. On 20 July 2023, the accused who was duly represented by an attorney, appeared before the magistrate on a charge of assault with the intent to do grievous bodily harm read with section 51 (2) and Part 3 of scheduled 2 of the Criminal Law Amendment Act 105 of 1997 as amended, read with the provisions of section 256 and 266 of the CPA, read together with section 1 of the Domestic Violence Act 116 of 1998 as amended and section 103 of the Firearms Control Act of 2000 as amended. The accused pleaded guilty to the charge.

- [3] A statement in terms of section 112(2) of the CPA in support of the plea of guilty was tendered. The accused was subsequently convicted as charged in respect of the charge. That was after the state had indicated their acceptance of the facts upon which the accused had pleaded.

- [4] The state also led the evidence of the complainant before sentence, which was unchallenged. In summary, the two were in a domestic

relationship. The complainant had because of the assault sustained a small wound on the head, which however did not require any medical intervention. At the time of her testimony, the wound had healed. All that remained was a small scar. After considering the mitigating and aggravating factors, the accused was sentenced to serve a term of 18 months’ imprisonment without an option of a fine, which was however suspended for five years on customary conditions. In addition, the accused was declared unfit to possess a firearm in terms of section 103 (2) of the Firearms Control Act 60 of 2000.

- [5] The matter was referred to this court upon special review in one respect only. That the learned magistrate erred in sentencing the accused as her jurisdiction was ousted by the amendment of Part 3 off schedule 2 of the Criminal Law Amendment Act 105 of 1997 which since is operation,[1] included a victim that is or was in a domestic relationship as defined in Section 1 of The Domestic Violence Act. The import thereof meant that the accused was eligible to be sentenced in terms of section 51(2) of the Criminal Law Amendment 105 Of 1997 to 10 years imprisonment in the absence of a finding of compelling reasons justifying departure from the mandatory sentencing regime. I agree with the magistrate. The ordinary

penal jurisdiction of a district court magistrate is a maximum of three years imprisonment[2].

- [6] Section 304 (4) of the CPA is generally invoked by a magistrate when the correctness of a conviction or sentence is in doubt, but the magistrate is functus officio about its correction[3]. The powers of this court on review are those referred to in section 304 (2) (c) (i-vi) of the CPA subject to the provisions of section 312 thereof regarding the remittal of the case to the court a quo. Significantly, this court has inherent power of review as extended by section 173 of the Constitution. The powers to intervene on review exist in circumstances where the proceedings are not in accordance

with justice.

- [7] In this case, the conviction of the accused by the magistrate cannot be faulted. Section 114 (1) of the CPA is clear that “If a magistrate’s court, after conviction following on a plea of guilty but before sentence, is of the opinion—

“... .

- (c) that the offence in respect of which the accused has been convicted is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate’s court; the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction”.

- [8] Accordingly, it follows that there is no need to interfere with the conviction, but the sentence imposed by the magistrate.

- [9] Order

- a. The conviction stands.
- b. The sentence imposed by the magistrate is reviewed and set aside and, in its place, replaced with the following order: “the proceedings are stopped, and the accused is committed for sentence by a regional court having jurisdiction”.

MUDAU J

[Judge of the High Court,

Gauteng Local Division,

Johannesburg]

I agree

Ismail J

- [1] Section 17 (b) of Act 12 of 2021 (w.e.f. 5 August 2022).

[2] S92(1) Magistrates' Courts Act 32 of 1944.

[3] S v Khubekha 1999

(1) SACR 65 (W).

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