

SOUTH AFRICA / JUDGMENT

S v M (38/2016) [2018] ZAFSHC 28 (15 March 2018)

[2018] ZAFSHC 28

COURT

Free State High Court, Bloemfontein

BEFORE

J.P. Daffue, C. Reinders

CASE / FILE NUMBER

38/2016

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IN

THE HIGH COURT OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN

Reportable:

NO

Of

Interest to other Judges: NO

Circulate

to Magistrates: NO

Review

No. : 38/2018

In

the review between:-

THE

STATE

and

B.

M.

CORAM:

DAFFUE, J et

REINDERS,

J

JUDGMENT

BY: DAFFUE, J

DELIVERED ON: 15 MARCH 2018

- [1] This is a special review in accordance with the provisions of s 304(4) of the Criminal Procedure Act, 51 of 1977 (“the Act”).
- [2] The accused, a 17 year old minor, was charged in the Thaba Nchu Magistrate’s Court with housebreaking with intent to steal and theft. He pleaded guilty, having been assisted and represented by his guardian and a legal representative. On 24 November 2015 the court a quo convicted him as charged. On 13 May 2016 he was sentenced to compulsory residence in a Child and Youth Care Centre in terms of s 76 of the Child Justice Act, 75 of 2008.
- [3] It should have been immediately clear to anyone perusing the record of proceedings that no term of compulsory residence was fixed. The accused was not declared unfit to possess a firearm In terms of s 103/(2) of the Firearms Control Act, 60 of 2000.
- [4] The matter was sent on automatic review. On 1 July 2016 a judge of this Division incorrectly certified that the proceedings were in order.
- [5] On 26 February 2018 the Head of Judiciary of the Thaba Nchu Magistrate’s Court forwarded the matter to this court for the matter to be considered as a special review. The presiding magistrate’s accompanying letter is of importance. The learned magistrate pointed out that she did not state the duration of compulsory residence when she sentenced the accused. This is a reviewable irregularity.
- [6] The learned magistrate suggested that the review court should impose a sentence of three (3) years’ compulsory residence. It must be taken into consideration that the accused had several brushes with the law before his conviction in casu. It appears from the social worker’s report that the accused was involved in crimes such as burglary and theft since the age of 13 years. Diversions in terms of Chapter 8 of the Child Justice Act were arranged to keep the accused outside the formal criminal justice system in order to try and rehabilitate him, but to no avail.
- [7] Section 76 of the Child Justice Act reads as follows and I quote the first two subsections only:
- “76. Sentence of compulsory residence in child and youth care centre.—(1) A child justice court that convicts a child of an offence may sentence him or her to compulsory residence in a child and youth care centre providing a programme referred to in section 191 (2) (j) of the Children’s Act.*
- (2) A sentence referred to in subsection

- (1) may, subject to subsection (3), be imposed for a period not exceeding five years or for a period which may not exceed the date on which the child in question turns 21 years of age, whichever date is the earliest.”
- [8] I am satisfied that compulsory residence of three (3) years should be imposed. There can be no prejudice to the accused and it is unnecessary to refer the matter back to the court a quo to reconsider sentence upon receipt of further submissions on behalf of the accused. If the sentence is not interfered with, the accused will have to remain at the compulsory residence until the age of 21. The accused was born on 5 June 1998 and will turn 21 on 5 June 2019.
- [9] The sentence shall be ante-dated to 13 May 2016. The accused will not have reached the age of 21 years by the time the sentence to be imposed expires on 13 May 2019 and consequently, such an order will not be in conflict with s 76(2) of the Child Justice Act.

10.1 The conviction is in order and confirmed.

10.2 The sentence is reviewed, set aside and substituted with the following:

10.2.1 The accused is sentenced to compulsory residence for a period of three (3) years in a Child and Youth Care Centre in terms of s 76 of the Child Justice Act, 75 of 2008;

10.2.2 The sentence is ante-dated to 13 May 2016.

10.3 The order in terms of s 103(2) of the Firearms Control Act, 60 of 2000, remains intact.

J.P. DAFFUE, J

I concur.

C. REINDERS, J

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