

SOUTH AFRICA / JUDGMENT

# S v Rebese (CA&R 15/21) [2021] ZANCHC 22 (23 July 2021)

[2021] ZANCHC 22

## COURT

Northern Cape High Court, Kimberley

## BEFORE

Lever, Stanton

## CASE / FILE NUMBER

CA&amp;R 15/21

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTHERN

CAPE DIVISION, KIMBERLEY)

Review

number: CA&amp;R 15/21

Magistrate's

Case No: A11/2021

In

the matter between:

THE  
STATE  
v  
ELVIS REBESE

Coram:

Lever J et Stanton AJ  
REVIEW

## JUDGMENT

Lever J

1 . This is a matter where the Chief Magistrate was made aware of an irregularity in sentencing the accused by a Senior Magistrate who himself became aware of the irregularity when reviewing finalised matters in Frances Baard District, Kimberley, The Chief Magistrate referred the matter to this Provincial Division with a request for a special review under the provision of s304(4) of the Criminal Procedure Act 51 of 1977 (CPA).

2. On investigation, it indeed transpired that this is a matter for review under the provisions of s 304(4) of the CPA.
3. The facts of the matter are, the accused was charged with the crime of stealing a mobile phone from a parked vehicle. The accused pleaded guilty and a statement was handed in under the provisions of s112(2) of the CPA. The accused was duly convicted. I am satisfied that the plea and the conviction are in accordance with justice.
4. The problem arises in the sentence that the presiding magistrate purported to impose on the accused. The record shows that the presiding magistrate intended to impose a sentence of direct imprisonment for a period of three (3) years with the Correctional Services having the option in appropriate circumstances having the option to release the offender. Clearly the presiding magistrate intended to sentence the offender under the provisions of s276(1)(i) of the CPA.
5. However, in pronouncing the sentence the presiding magistrate sentenced the offender to three (3) years imprisonment under the provisions of s276(1)(h) of the CPA.
6. Section 276(1)(h) of the CPA provides for correctional supervision and not the direct imprisonment the presiding magistrate obviously intended. In corresponding with the presiding magistrate, he confirmed that a period of direct imprisonment was envisioned and that his reference to s276(1)(h) as opposed to s276(1)(i) of the CPA was a bona fide error on his part.
7. Imposing a sentence of correctional supervision in terms of s276(1)(h) of the CPA requires that the provisions of s276A of the CPA also have to be complied with. The provisions of the said section read:

"276A(1) Punishment shall, subject to the provisions of s 75 of the Child Justice Act, 2008, only be imposed under section 276(1)(h)-

- (a) after a report of a probation officer or a correctional official has been placed before the court, . . . "
8. The provisions of s75 of the Child Justice Act do not apply to this case.
9. No report of a probation officer or a correctional official was placed before the court when the offender was sentenced. The sentencing of the offender was therefore irregular.
10. In the circumstances, the sentencing of the offender is set aside, and the matter is referred back to the same presiding magistrate to commence sentencing afresh.

Lawrence Lever

Judge

Northern Cape Provincial Division

I agree,

Alme Stanton

Acting Judge

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Prepared on 10 October 2026 · Esheria