

SOUTH AFRICA / JUDGMENT

S v S.P (RCD117/2016) [2017] ZAWCHC 41 (16 February 2017) [2017] ZAWCHC 41

COURT

Western Cape High Court, Cape Town

BEFORE

Holderness

CASE / FILE NUMBER

RCD117/2016

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

(Coram: Holderness, AJ)

[Not Reportable]

High Court Ref No: 780

Regional Court Case No: RCD 117/2016

Magistrate's serial No: 04/16

THE STATE

and

S P

REVIEW JUDGMENT: 16 FEBRUARY 2017

HOLDERNESS AJ:

[1] This matter comes before me by way of special review from the Magistrate, Khayelitsha, in terms of section 304 (4) of the Criminal

Procedure Act 51 of 1977 ("the CPA"), read with s 85(1)(b) of the Child Justice Act 75 of 2008 ('the Child Justice Act').

[2] Section 85(1) of the Child Justice Act provides as follows:

‘85 Automatic review in certain cases

- (1) The provisions of Chapter 30 of the Criminal Procedure Act dealing with the review of criminal proceedings in the lower courts apply in respect of all children convicted in terms of this Act: Provided that if a child has been sentenced to any form of imprisonment or any sentence of compulsory residence in a child and youth care centre providing a programme provided for in section 191 (2) (j) of the Children's Act, the sentence is subject to review in terms of section 304 of the Criminal Procedure Act by a judge of the High Court having jurisdiction, irrespective of-
 - (a) the duration of the sentence;
 - (b) the period the judicial officer who sentenced the child in question has held the substantive rank of magistrate or regional magistrate;
 - (c) whether the child in question was represented by a legal representative; or
 - (d) whether the child in question appeared before a district court or a regional court sitting as a child justice court.’
- [3] One of the guiding principles of the Child Justice Act, as set out in section 3(a) thereof, is that all consequences arising from the commission of an offence by a child should be proportionate to the circumstances of the child, the nature of the offence and the interests of society.
- [4] The facts in this matter, briefly stated, are that the accused, a first offender, pleaded guilty to the charge of robbery with

aggravating circumstances, and admitted all the material facts, which admissions were properly made in terms of section 112(2) of the CPA. He was convicted on the basis of the plea. The accused was represented by a private attorney throughout the proceedings.
- [5] During the address on sentence, it emerged that the accused gave the incorrect date of birth to the police when he was arrested, and that his date of birth was in fact [...] 1999, and not 1997. Earlier in the proceedings the magistrate asked the accused how old he was and he informed the court that he was 19 years of age.
- [6] As soon as it became apparent that the accused was in fact a minor, the Magistrate, quite correctly, enquired whether a family member of the accused was in court, and when this was confirmed, he stood the matter down.
- [7] The magistrate placed on record that because the accused was a minor, certain pre-trial procedures should have been considered in terms of the Child Justice Act, including an assessment of the juvenile offender and the possibility of diversion.
- [8] The court was of the view that, notwithstanding the fact that the accused was not properly assessed in accordance with the Child

Justice Act, no undue prejudice was caused to him, particularly as the accused was in fact the cause of the error.

[9] The matter was then adjourned and the sentencing proceedings were conducted as provided for in terms of section 16 of the Child Justice Act, which states as follows:

16 Error regarding age of child or adult who is alleged to have committed offence

- (1) If, at any stage during proceedings in terms of this Act, a presiding officer is satisfied on the basis of evidence placed before him or her that the age of a child or adult who is alleged to have committed an offence (hereafter in this section referred to as person) is incorrect, the age must be altered on the record of the proceedings in accordance with section 14 and the proceedings must be finalised in accordance with the provisions of-
 - (a) this Act, if the person is found to be a child; or
 - (b) the Criminal Procedure Act, if the person is found to be an adult, unless the provisions of section 4 (2) are applicable.
- (2) If a presiding officer is of the opinion that an error regarding age may have caused any prejudice to a person during the proceedings in question, the presiding officer must transmit the record of the proceedings to the registrar of the High Court having jurisdiction,

in the same manner as provided for in section 303 of the Criminal Procedure Act, in which event the proceedings must be dealt with in terms of the procedure on review as provided for in section 304 of the Criminal Procedure Act.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2017/41.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-sp-unknown-topic-awchc-2017>

Prepared on 9 October 2026 · Esheria