

SOUTH AFRICA / JUDGMENT

State v M (A599-17,259-17,A298-17, 17-17) [2017] ZAGPPHC 1288 (27 November 2017) [2017] ZAGPPHC 1288

COURT

North Gauteng High Court, Pretoria

BEFORE

S. Potterill, A.J. Bam

CASE / FILE NUMBER

A599/17

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IN

THE-HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

(1)

NOT

REPORTABLE

(2)

NOT OF

INTEREST TO OTHER JUDGES

(3)

REVISED.

Date: .27/11/2017
A599/17
High
Court Reference No: 259/17
Case
No: A298/17
Magistrate's
serial number: 17 / 17
MAGISTRATE
TSHWANE
NORTH (held at SOSHANGUVE)
THE
STATE v S M
REVIEW

JUDGMENT

POTTERILL J

- [1] The accused herein was 17 years and 9 months old when he pleaded guilty on charges of assault with intent to do grievous bodily harm and malicious damage to property. He was sentenced to 18 months compulsory residence in Bosasa Child and Youth Care Centre in terms of section 76(1) of the Child Justice Act, 75 of 2008.
- [2] I am thankful to the Deputy Director of Public Prosecutions and Senior State Advocate advising me upon request that in fact there was exact compliance with the provisions of the Child Justice Act.
- [4] Pertaining to sentence the accused accounted to the probation officer that he in fact threatened to stab his mother with a knife. It is the contention of the state advocate that although this threat did not form part of the facts contained in the section 112 (2) statement, it is relevant in as far as an appropriate sentence is concerned. This is a further indication of the accused's moral blameworthiness and apparent poor prospect of rehabilitation. This is specially so due to his threats and aggressive behaviour over an extended period of time. So much so that the accused's mother fears for her life and that of her new born child. The aggressive behaviour as testified to by the mother is corroborated by the probation officer talking to the neighbour as well as the social worker at Soshanguve Secure Centre corroborating the mother's version of his behaviour. The accused further admitted to substance use/abuse although he . denies being dependent thereon. It is also common cause that on two previous occasions criminal charges were diverted with both of them relating .to assault with intent to do grievous bodily harm.

- [5] The Senior State Advocate submitted that while the nature of the sentence imposed cannot be faulted, the term may need to be revisited in view of the fact that the appropriate conviction in respect of count 1 is that of common assault. It is then proposed that the period of 18 months be reduced to 12 months.
- [6] I am however of the view that when considering the delinquent behaviour of the accused that started several years ago and which has not been managed by means of diversion the 18 months is not shockingly inappropriate in these circumstances.
- [7] I accordingly make the following order:

7.1 The conviction on count 1, assault with intent to do grievous bodily harm is set aside and substituted with assault common.

7.2 Count 2, the conviction on malicious injury to property is confirmed.

7.3 The sentence of 18 (eighteen) months compulsory residence in Bosasa Child and Youth Care Centre is confirmed.

S. POTTERILL

JUDGE OF THE HIGH COURT

I agree

A.J. BAM

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