NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT,

PRETORIA (REPUBLIC OF SOUTH AFRICA)

CASE NUMBER: A125/2012

HIGH COURT REF. NR.: 1217

DATE: 02/03/2012

THE STATE V B T L

JUDGMENT

MABUSE J:

1. This matter came before me as a special review in accordance with the provisions of s. 304(4) of the Criminal Procedure Act 51 of 1977 ("the CPA"). The crisp issue in this review is whether the proceedings in the court a quo were in accordance with the principles of justice.

2.The accused, B T (M) L, a juvenile appeared before a regional Court Magistrate at Benoni

where he was charged with, and convicted of, robbery with aggravating circumstances as contemplated in S. 1 of the CPA. It had been alleged by the State that the accused committed the aforesaid offence on 6 January 2011 at or near Putfontein when he assaulted one Alex Mnisi, the complainant and, by using a firearm, took his property or such property that was in his lawful possession, namely, a silver grey Maxwheel bicycle.

3. The accused, who enjoyed legal representation at the trial, pleaded guilty in terms of the provisions of S. 112 of the CPA and his legal representative handed into court a written plea explanation in accordance with the provisions of the said section. The State was content that the said plea explanation accorded with the facts of the case as contained in the case docket and the accused was accordingly convicted as charged after the State had indicated that it accepted his plea.

4. The case was then postponed for a probation officer's and correctional supervisor's reports to 29 June 2011. When the matter resumed on 29 June 2011 only the probation officer's report was available. Same had been handed to the trial magistrate in chambers. In the aforementioned report, the probation officer had recommended that the accused could be sentenced in terms of the provisions of S. 276(1 )(h) of the CPA, which is a sentence of correctional supervision. The State was satisfied, in its well considered opinion, that the said recommended sentence was the appropriate one and accordingly supported it. It urged the court to impose the said sentence on the accused and the court duly obliged. It sentenced the accused to three (3) years correctional supervision and, in addition, declared him, in terms of the provisions of S. 103(1) of the Firearms Control Act 60 of 2000, unfit to possess a firearm. It is only apposite at this stage to point out that as at 6 January 2011, the day on which the appellant allegedly committed the offence with which he was charged and convicted, the

accused was sixteen (16) years old and was a child for the purposes of the Child Justice No. 75 of 2008 Act ("the Child Justice Act"). The Child Justice Act defines a child as any person under the age of eighteen (18) years and, in certain circumstances, means a person who is 18 years or older but under the age of 21 years whose matter is dealt with in terms of S. 4(2) of the Child Justice Act.

5. The senior magistrate, Mrs L. Sheppard, somehow came to know about the sentence that the court had imposed on the accused and became dissatisfied with it. In a letter that she wrote and which letter accompanied the record of the proceedings of the trial court, Mrs. Sheppard recommended that, by reason of the following grounds, the sentence of correctional supervision should be set aside: firstly, the trial magistrate had failed to determine the nature and extent of the correctional supervision and, secondly, to comply with the provisions of S. 72 of the Child Justice Act No. 75 of 2008.

6. In receipt of the file I sent the whole of it to the office of the Director of Public Prosecutions and requested him to comment on the proceedings, in particular, the sentence imposed on the accused and the comments by Mrs. Sheppard. The Director of Public Prosecutions, to whom I am indebted for his erudite assistance, duly responded to my query.

7. He supports Mrs. Sheppard's view and aligns himself with it. He submitted that although s. 75(a) of Act 75 of 2008 allows for juvenile of fourteen (14) years or older to be sentenced to correctional supervision in terms of S. 276(i)(h) of the CPA, the said section must be read subject to S. 72(2) of the Child Justice Act 75 of 2008 which deals with community based sentences. S. 72(1) provides that:

"A community-based sentence is a sentence which allows a child to remain in the community and includes any of the options referred to in S. 53, as sentencing options, or any combination thereof and a sentencing involve correctional supervision referred to in S. 75."

S. 53 of the Child Act deals with various sentencing options.

"(2) A child justice court that has imposed a community based sentence in terms of subsection (1) must -
(a) request the probation officer concerned to monitor the child's compliance with the relevant order and to provide the court with progress reports in the prescribed manner including compliance; and
(b) warn the child that any failure to comply with the sentence will result in him or her being brought back before the Child Justice Court for an inquiry to be held in terms of S. 79."

8. According to the Director of Public Prosecutions, the term "correctional supervision" does not connote a sentence but refers to a collective term used to describe various measures which have in common that they are all applied outside prison such as monitoring, house arrest, community service, placement in employment or rehabilitation programmes. It is for the above reasons that Mrs. Sheppard commented that the magistrate did not establish the nature and scope of the correctional supervision. The Director of Public Prosecutions referred me to the authority of S v R 1993(1) SA 476 AA. In the said authority Kriegler A.J.A, as he then was, had this to say:

"By nadere ondersoek word dit duidelik dat die banaming "korrektiewe toesig" nie soseer 'n vonnis beskryf nie maar 'n versmeinaam is vir 'n wye verskeidenheid maatreels waarvan die

enkele gemeenskaplike kenmerk is dat hulle buite die gevangenis toegepas word."

"The term "correctional supervision" refers not so much to a sentence but is a collective term for a wide variety of measures which have in common that they are only applied outside prison."

9. Because the term "correctional supervision" refers to diverse non-custodial measures, it was
not enough, let alone appropriate, for the trial magistrate just to sentence the accused to "correctional supervision" in terms of S.276(i)(h) of the CPA. What the magistrate should have done, according to the Director of Public Prosecution, was to identify the specific measures applicable to the accused and thereafter formulate a general framework in which the measures would be implemented. I was referred in this regard to S v. Ndaba 1993(1) SACR 637(A) at 6411-6426. The trial magistrate should have complied with the provisions of S. 75 of the Child Justice Act.

In the result, I make the following order:
(1) The sentence imposed by the magistrate on the accused is hereby set aside.
(2) The matter is remitted to the magistrate court for the purposes of determining the nature and scope of the correctional supervision and for compliance with the provisions of S. 75 read with S. 72 of the Child Justice Act 75 of 2008.

P.M. Mabuse J
Judge of the High Court

I Agree

N. M. Mavundla J

Judge of the High Court