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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE: 12/02/2018

HIGH COURT REF. NO. : 293/17
CASE NO : A645/16
MAGISTRATE'S SERIAL NO: 71/12/2016

IN THE MATTER BETWEEN:

THE STATE

Vs

SIYABONGA GEORGE TSHABALALA

REVIEW JUDGMENT

TOLMAY, J:

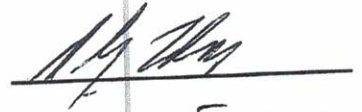
- [1] This matter came before me for review in terms of sec 16(2) of the Child Justice Act, no 75 of 2008.
- [2] The accused was arrested and appeared on 12 December 2016 in Heidelberg magistrate's court on a charge of "possible trade in dagga". The accused was informed of his right to legal representation and elected to conduct his own

defence. The matter was then postponed to 23 January 2017 for further investigation and the accused was released on warning. On 23 January 2017 the accused was present and the prosecutor requested another postponement to 30 March 2017 in order for the substance to be forwarded to the LAB for analysis.

- [3] On 30 March 2017 the accused was warned by the court to appear on 25 May 2017 since the results were still outstanding. On 25 May 2017 the accused did not attend court and a warrant for his arrest was authorized. The accused arrived at court on his own accord and appeared on 29 May 2017, an enquiry was held and the warrant was subsequently cancelled. The matter was postponed for the case docket to 6 June 2017. The accused failed to appear on 6 June 2017 and a warrant of arrest was again issued. The accused was arrested and appeared on 1 September 2017. He was kept in custody and the matter was postponed to 4 September 2017 for the enquiry. On 4 September 2017 no interpreter was available to assist with the enquiry and the matter was postponed to 5 September 2017. The accused remained in custody.
- [4] On 5 September 2017 the enquiry was conducted and he was convicted of contempt of court after his explanation was not accepted. Only during mitigation of sentence it emerged that the accused is under the age of 18 and he was subsequently released on warning to provide proof of his age on 6 September 2017. On 6 September 2017 the accused again appeared with the required proof. The charge of dealing in drugs was withdrawn and the accused was "cautioned and discharged" on the contempt of court.

- [5] The DPP was approached by the reviewing acting Judge for comment. The learned Acting Judge did not request reasons from the magistrates in terms of sec 304(2) of Act 51 of 1977. As a result and in order to ensure compliance I forwarded the DPP's comments to the learned magistrate for his comments.
- [6] The learned magistrate commented as follows:
"I referred this matter for review in terms of sec 16(2) of the Child Justice Act no 75 of 2008, as I am of the opinion that the error as to the age of the accused caused prejudice to the accused, in that due to the facts that the accused was under the age during his arrest and the fact that the accused was not treated according to the Child Justice Act no 75 of 2008 from date of his arrest, I believe that the proceedings from the date of his arrest were irregular, and must be declared as such and the conviction should on that basis be set aside."
- [7] The guardian of the accused was never present throughout the proceedings, the accused did not have any legal representation, no preliminary inquiry was conducted and no pre-sentence report was obtained as prescribed by the Child Justice Act no 75 of 2008 (CJA). Both the DPP and the learned magistrate support the view that under these circumstances the proceedings should be declared irregular and should be set aside. I agree with this view.
- [8] In the light of the aforesaid the proceedings should be declared irregular and set aside.
- [9] The following order is made:

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- a. The proceedings are declared irregular; and
 - b. The conviction is set aside.



R G TOLMAY
JUDGE OF THE HIGH COURT

I agree



C PRETORIUS
JUDGE OF THE HIGH COURT