



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Review No.: 34/2016

In the review case between:

THE STATE

and

J. J. M.

CORAM: VAN ZYL, J *et* ZIETSMAN, AJ

JUDGMENT BY: ZIETSMAN, AJ

DELIVERED ON: 12 MAY 2016

[1] This is a matter sent on special review by the Magistrate of Sasolburg, Mr D van Rooyen on 17 November 2015.

[2] In accordance with the submission by the Magistrate the accused was found guilty on a charge of theft of cash in the amount of R1 666 and cigarettes to the value of R265 by

Magistrate Neyt on 29 June 2016. The accused was sentenced to 6 months imprisonment wholly suspended for a period of 5 years on certain conditions.

- [3] At the time of conviction and sentence the accused was only 17 years of age. He was represented at the hearing by an attorney and he pleaded guilty. A section 112(2) written statement was handed in.

- [4] According to the Magistrate, and during a routine checking of completed work he became concerned because the Magistrate imposed a sentence contrary to the provisions of section 77 of the Child Justice Act, 75 of 1998 in that a pre-sentence report prepared by a probation officer was a pre-requisite and even so where the sentence to imprisonment was wholly suspended. In this instance he also referred to section 85 of the Child Justice Act which determines that if a child has been sentenced to any form of imprisonment, the sentence shall be subject to review in terms of section 304 of the Criminal Procedure Act 51 of 1977.

- [5] The Magistrate further referred us to **S v Kwanele Singana** (CA & R 54/2015) [2015] ZAECPHC 9 delivered on 4 March 2015 where it was found that “any form of imprisonment” includes a wholly suspended sentence.

- [6] After the special review was considered initially, the Review Judge, Pienaar AJ made certain enquiries as to the second page of the section 112(2) statement which was not put

before him as well as the appointment date of Magistrate Neyt. The review was referred back on 19 February 2016 and the answer from the Magistrate was received on 28 April 2016

- [7] Magistrate van Rooyen replied indicating that Magistrate Neyt was indeed properly appointed as at 29 June 2015 when the matter was concluded and the full original section 112(2) statement was furnished.
- [8] The Magistrate is of the opinion that the conviction is in order but that the sentence should be reconsidered by the Magistrate after a pre-sentence report has been obtained. I agree with the views expressed by the Magistrate.
- [9] On the aforesaid premises I am satisfied that the conviction is in order but the matter should be re-submitted to the Magistrate to ensure that a pre-sentence report is obtained and considered before the accused is sentenced afresh.
- [10] Therefor I make the following order:
1. The conviction is confirmed.
 2. The sentence is set aside and the matter is referred back to the magistrate to consider sentence afresh after a pre-sentence report had been obtained.
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P. ZIETSMAN, AJ

I concur.

C. VAN ZYL, J

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