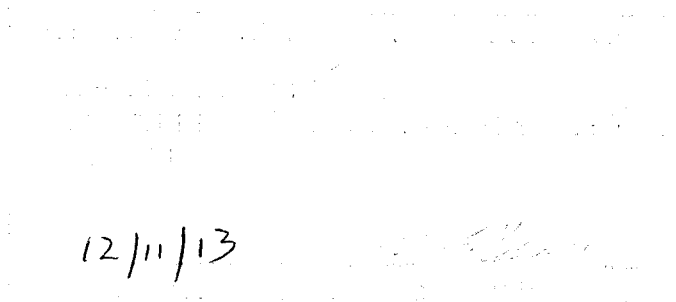


A921/13

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DATE: 15/11/2013



HIGH COURT REF. NO.: 979
MAGISTRATE'S SERIAL NO: 2/2013
CASE NUMBER: 255/2013

In the matter between:

THE STATE

Vs

KOKETSO THAGA

REVIEW JUDGMENT

TOLMAY, J:

[1] This matter came before me by way of special review.

[2] The accused, a 15 year old male, was convicted on 2 September 2013 in the magistrate's court Moutse on one count of housebreaking with intent to steal and theft and one count of theft following his plea of guilty. He was subsequently sentenced to be sent to a reform school

as defined in section 1 of the Children's Act designated by the Director-General, Department of Health and Social Service, Limpopo in terms of section 290 (1)(d) of Act 51 of 1977.

- [3] The accused was legally represented during the proceedings.
- [4] The matter was sent on review and the reviewing magistrate stated that the sentence was defective as it was imposed in terms of sec 290 of the Criminal Procedure Act, Act 51 of 1977 which was repealed by the Child Justice Act 75 of 2008.
- [5] The magistrate concluded that the sentence should be set aside and the matter remitted to the court for sentencing afresh.
- [6] The DPP's opinion was sought and they agreed with the view of the learned magistrate that the sentence should be set aside and the matter referred back to the magistrate for resentencing..
- [7] On a perusal of the record the conviction was in accordance with justice and should be confirmed.
- [8] I am also of the view that the sentence should be set aside and referred back to the magistrate for sentencing afresh due to the fact that the sentence was erroneously done under the wrong act..

[9] The following order is made:

1. The conviction is confirmed.
2. The sentence is set aside and the matter is remitted to the magistrate's court for sentencing afresh.

I agree:


R G TOLMAY
JUDGE OF THE HIGH COURT


C PRETORIUS
JUDGE OF THE HIGH COURT