

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



IN THE HIGH COURT OF SOUTH AFRICA
[NORTHERN CAPE HIGH COURT, KIMBERLEY]

REVIEW CASE NO: 97/11

In the matter between:

SHADRACK MMOLAWA

ACCUSED 1

MODISAOTSILE HARRY MOFETA

ACCUSED 2

AND

THE STATE

Coram : PAKATI AJ et HUGHES-MADONDO AJ

Date of judgment : 11 MAY 2012

REVIEW JUDGMENT

PAKATI AJ

1. This matter came before us by way of automatic review in terms of Section 85 of the Child Justice Act, 75 of 2008. The accused were charged and convicted of housebreaking with intent to steal and theft on 07 August 2011 before Magistrate Mr H.H Strauss. They pleaded guilty to the charges and were sentenced in terms of section 297 (1) (a) of the Criminal Procedure Act, 51 of 1977. The accused were represented by Mr Gothla. They were correctly

convicted.

2. The sentence reads as follows:

" Ingevolge Art 297 (1)(a) Wet 51 van 1977 word die oplegging van beide (beskuldigde) vonnise uitgestel vir 'n periode van 5 (vyf) jaar op voorwaarde dat beide (beskuldigde) elke 3 (drie) maande by die maatskaplike werker Jan-Kempdorp aanmeld tot bereiking van die ouderdom van 18 jaar. Beide beskuldigde word beveel om by verstryking van die uitstel periode weer voor die hof te verskyn".

3. Mmolowa (accused 1) was born on 03 October 1996 and Mofeta (accused 2) on 21 June 1994. Each of them has been ordered to *"elke 3 (drie) maande by die maatskaplike werker Jan-Kempdorp aanmeld tot die bereiking van die ouderdom van 18 jaar"*. There is therefore a great disparity in the treatment of the accused for the same offence, committed by them together, with no evidence that anyone of them took a significant leading role. In terms of the Magistrate's order Mofeta will complete his reporting on 21 June 2012 (in just over a month's time when he turns 18) whereas Mmolowa will have to complete his reporting on 03 October 2014 when he becomes 18 years.
4. It is a principle of our law that where "there is a disturbing disparity in ... sentences, and the degrees of participation are more or less equal, and there are not personal factors warranting such disparity, appellate interference with the sentence may, depending on the circumstances, be warranted. The ground of interference would be that the sentence is disturbingly inappropriate". See **S v GIANNOULIS 1975 (4) SA 867 (A)** at 873G-H.
5. The order by the magistrate is also not comprehensive enough because it does not state that the accused should be accompanied

by their parents; appropriate adults or guardians when reporting to the Social Worker, Jan Kempdorp.

6. The order by the Magistrate must not really be viewed as punishment but as a correctional and rehabilitative measure. I see nothing magical about the age of 18 years, with reference to Mofeta. He was sentenced on 08 March 2012 and shall have benefitted nothing when he turns 18 in over a month's time.

In the circumstances I make the following order:

The sentence by the magistrate is set aside and replaced with the following sentence:

"1. In terms of Section 297 (1) (a) of the Criminal Procedure Act, 51 of 1977, the passing of sentence is postponed for a period of five years on condition that each accused, accompanied by his parent; an appropriate adult or a guardian, reports to the Social Worker, Jan-Kempdorp, every three months calculated from 08 March 2012:

- a) In respect of accused 1 (Mmolawa) until 30 June 2013.
- b) In respect of accused 2 (Mofeta) until 31 March 2013.

2. Both accused are ordered to appear before Court at the expiration of the period of suspension being the first Court date after 08 March 2017".

3. In terms of Section 282 of the Criminal Procedure Act, 51 of 1977, this order is antedated to 08 March 2012.

BM PAKATI

ACTING JUDGE

W HUGHES- MADONDO

ACTING JUDGE