

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No. : 913/07

In the review between:-

THE STATE

and

TSHEPO DAVID MANGWANE

Accused One

ROBERT CHARLIE McLOEN

Accused Two

CORAM:

RAMPAI, J *et* EBRAHIM, J

JUDGMENT BY:

RAMPAI, J

DELIVERED ON:

6 DECEMBER 2007

- [1] The matter came to this court by way of a special review in terms of section 304(4) Criminal Procedure Act, No. 51 of 1977. The two juvenile offenders namely Tshepo David Mangwane and Robert Charlie McLoen were arrested on 14 February 2007. They were charged with the crime of burglary and theft. The prosecution alleged that they committed the crime at Mokwallo, Vredefort during the night of 12 and 13 February 2007. The victim was a certain Mr. Petrus Hlathi. They stole a DVD, its components as well as

cash from the victim.

[2] On 9 March 2007 they pleaded guilty. They were convicted on their pleas. On the same day the magistrate made an order in terms of section 290(1)(d), Act No. 51/1977 that they be sent to a reform school in lieu of sentencing them.

[3] Ms Z. Makholwa, a probation officer at Kroonstad, investigated the social circumstances of each of these children. On 22 February 2007 she compiled a professional welfare report in respect of Tshepo David Mangwane. On 19 March 2007 she compiled a similar report in respect of Robert Charlie McLoen. She recommended that the juvenile offenders be referred to a youth care centre called Ithokomala somewhere in Mpumalanga Province. Pending their admission to the recommended care centre, she requested that the two children temporarily be housed at Matete Matches, a secure care centre at Kroonstad.

[4] Ms E.M. Vergottini, the chief probation officer, Department of Welfare, Kroonstad has apparently been at work trying to facilitate the transfer of the two boys from the care centre in the Free State Province to the recommended care centre in the Mpumalanga Province. So far her efforts have been

fruitless. See her letters to the magistrate, Vredefort dated 27 September 2007, 3 October 2007 and 18 October 2007.

- [5] In her last letter of 18 October 2007 to the magistrate Ms Vergottini wrote:

“Na aanleiding van my skrywe gedateer 3 Oktober 2007 en die nuwe sake wat tans hangende teen die bogenoemde twee jeugdiges is blyk dit dat die enigste gepaste opsie tans sou wees om die twee seuns se sake om te skakel in kinderhofverrigtinge en hulle na ‘n Nywerheidsskool te verwys.

Volgens Mev. Carrol van Jimmy Roos is daar tans nie vakante plekke nie, maar sal daar teen Januarie 2008 weer plek wees vir nuwe opnames. Ek sou dan ook aanbeveel dat hierdie prosedure voorrang geniet en so spoedig moontlik afgehandel word ten einde hulle opname in Januarie 2008 te verseker. Beide seuns word tans aan onstabiliteit blootgestel en is maar in wese op hulleself aangewese wat hulle betrokkenheid by misdadigheid bevorder. Die opname in ‘n sentrum soos Jimmy Roos behoort aan hulle die stabiliteit en dissipline te voorsien wat in hulle lewens tans ontbreek.”

- [6] On the same day, 18 October 2007, Mr S.B. Tladi, the assistant manager of Matete Matches Secure Care Centre wrote to Mr G.C. Prinsloo, district court magistrate, Vredefort:

“The above mentioned centre would like to request the Magistrate and the Prosecutor to reconsider the alternative placement for the following minor CHARLIE ROBERT MCLEON who is being placed at Matete Matches for developmental programmes whilst attending his court cases and still being placed at the centre.

We wish to inform the court that this child Charlie Robert Mcleon does no longer fit into our programmes and most of the time he tries to do funny thing by non co-operating with the children as well as the Educators in the class room. He refused to be woken up early in the morning for Head count and doesn't want to go to school after breakfast every morning. Recently he absconded at the centre on Friday the 12 October 2007 to go and sell two blankets at the location and I only managed to get him on my way to the work. Currently the centre is full and there is no space for him at the moment and this puts us in a predicament situation. Myself as an Assistant Manager tried several times to intervene but seems not to go through to assist her and several interventions methods were tried like behaviour session programme, group sessions and group meetings but to no avail."

[7] The above correspondence from Mr. Tladi and Ms Vergottini prompted the district magistrate to seek the intervention of the High Court by way of special review in terms of section 304(4), Act No. 51/1977. In a letter dated 30 October 2007 addressed to the registrar of this Court he wrote:

- “1. Beide beskuldigdes is op 09/03/2007 gevonniss (sic) i.t.v. art. 290(1)(d) Wet 51/1977
2. Die aangeleentheid is daarna verskeie kere uitgestel vir aanwysing van 'n verbeteringskool
3. Die betrokke proefbeampte ondervind probleme om plek in 'n verbeteringskool te kry. Sien skrywes hierby aangeheg. Die saak is sedert 14/02/2007 op die rol.
4. A.g.v. die vertraging was beskuldigdes vrygelaat in sorg van voogde. Intussen is beide weer gearresteer vir aanklagte van Roof en Huisbraak en is tans in hegtenis plek van veiligheid.
5. Omskepping van verhoor tot ondersoek i.t.v. art. 254 Wet 51/1977 mag dalk gepas wees in die omstandighede. 'n Beslissing van welke aard berus egter by die Agbare Hersieningsregter en verneem ek graag van u in die verband.”

[8] Section 254 Act No. 51/1977 provides:

“254 Court may refer juvenile accused to children's court

Cases

(1) If it appears to the court at the trial upon any charge of any accused under the age of eighteen years that he is a child as referred to in section 14 (4) of the Child Care Act, 1983 (Act 74 of 1983), and that it is desirable to deal with him in terms of sections 13, 14 and 15 of that Act, it may stop the trial and order that the accused be brought before a children's court mentioned in section 5 of that Act and that he be dealt with under the said sections 13, 14 and 15.

[Sub-s. (1) substituted by s. 8 of Act 26 of 1987.]

(2) If the order under subsection (1) is made after conviction, the verdict shall be of no force in relation to the person in respect of whom the order is made and shall be deemed not to have been returned.”

[9] It appears that there is no suitable youth care centre where the two juveniles may be placed for rehabilitative purposes in order to comply with the court order made on 9 March 2007. The juveniles were not sentenced after their conviction. Instead the court ordered that they be sent to a reform school in terms of section 290(1)(d).

[10] Tshepo David Mangwane was born on 12 August 1992. He

is now 15 years of age. His biological father is unknown. His mother has died. His stepfather is unemployed. He is unable to provide the basic material needs for the boy. The youth left school last year. He is now on drugs, to wit, dagga. He is also doing crime. He is no longer in a temporary care centre at Kroonstad but in custody. This is undesirable. It appears that Jimmy Roos Centre can accommodate him early next year.

[11] Therefore, I find: that T.D. Mangwane to be a child without a parent or guardian; that he displays behaviour which cannot be controlled by the persons in whose custody he was recently released; that he is under the age of 18 years; that it is desirable to deal with him in terms of section 13, 14 and 15 of the Children's Act, No. 74/1983 and that it is necessary to set his conviction aside so that he may be brought before the children's court in terms of section 5, Act No. 74/1983.

[12] Robert Charlie McLeon was born on 3 September 1992. He too is now 15 years of age. His parents, who never married each other, have died. He and his younger brother have

since being living in the care of their maternal grandmother.

He drinks and smokes. He even smokes dagga. He is now doing crime. He is presently no longer temporarily accommodated at Matete Matches Secure Care Centre at Kroonstad.

[13] As regards McLeon, I make similar findings as I did in the case of his friend, Mangwane. He is currently in an undesirable custody for children.

[14] Accordingly I make the following order in respect of each juvenile in accordance with the request by the magistrate:

14.1 The criminal proceedings which culminated in their conviction at Vredefort on 9 March 2007 are set aside in terms of section 254(2).

14.2 The magistrate is directed to convert their criminal case into an enquiry in terms of section 5, Act No. 74/1983 in accordance with the provisions of section 254(1).

M.H. RAMPAL, J

I concur.

S. EBRAHIM, J

/sp