



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

Reportable/Not reportable

Case number: R23/2024

In the matter between:

THE STATE

and

LEBOHANG EMMANUEL MOKONE

Coram: Loubser J et Cronje AJ

Heard: 5 August 2024

Delivered: 21 August 2024

Summary: Jurisdiction of Magistrate's Court to adjudicate cases up to point of conviction where minimum sentences are applicable – whether regional Court is bound by mitigating and aggravating factors already adduced in Magistrate's Court when matter is referred for sentence

ORDER

1. The conviction of the accused in the district magistrate's court is confirmed.
 2. The regional court must proceed to finalize the matter in an unrestricted manner.
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JUDGMENT

LOUBSER J (Cronje, AJ concurring)

[1] This matter came before me in the form of a special review referred to this court by the regional magistrate of Welkom in terms of Section 304 of the Criminal Procedure Act¹ ('the CPA'). The issues raised by the regional magistrate are the following: Firstly, whether a district magistrate has the necessary jurisdiction to hear a matter where minimum sentences exceeding the magistrate's jurisdiction are applicable. Secondly, where the magistrate has referred the matter to the regional court for sentencing after conviction, whether the regional court is not perhaps restricted to the mitigating and aggravating factors already adduced in the magistrate's court with a view to sentence.

[2] The accused was charged in the Winburg magistrate's court of assault with the intent to do grievous bodily harm, read with the provisions of section 51(2)(b) and Part 3 of Schedule 2, as amended, of Act 105 of 1997, which provides for the imposition of certain minimum sentences for certain offences. One of those offences is assault to do grievous bodily harm in circumstances where the victim is or was in a domestic relationship. The accused was therefore eligible to be sentenced to ten years imprisonment in the absence of a finding of compelling reasons justifying departure from the mandatory sentencing regime. The ordinary penal jurisdiction of a district magistrate's court is a maximum of three years imprisonment.

[3] The accused pleaded not guilty to this charge, as well as to a second charge relating to the violation of a domestic violence protection order. After hearing the evidence presented by the prosecution and the accused, the presiding magistrate found the accused guilty on both counts. The magistrate thereafter heard submissions relating to mitigating and aggravating circumstances but instead of sentencing the accused, she referred the matter to the regional court for sentencing in terms of the provisions of section 116(1) of the CPA. This was done because she held the view that the offences merited punishment in excess of the jurisdiction of a magistrate's court.

[4] The regional court magistrate then requested a review of the proceedings in the trial court as far as the issues raised by him, were concerned. In respect of the jurisdictional competence of the magistrate's court to hear the matter in question, the regional court magistrate referred to the wording of section 51(2)(b) of Act 105 of 1997, which provides that a regional court or a high court shall sentence a person convicted of an offence referred to in Part 3 of Schedule 2 to certain periods of imprisonment depending on whether

¹ Act 51 of 1977

he is a first, second or third offender of such offence.

[5] The question is therefore whether only a regional court or a high court has the competence to hear cases which carry minimum sentences after a potential conviction.

[6] I am of the view that such a proposition cannot be correct, because the section in question only refers to the imposition of sentences, and not to the hearing of cases on their merits. I find support for this view in the unreported review judgment in *The State v William Kobe*.² A very similar situation to the present matter presented itself in that case, except that the trial magistrate proceeded after conviction to sentence the accused to the relevant minimum sentence, which exceeded the normal penal jurisdiction of the magistrate's court. The review judges could not find any fault with the conviction, and only set aside the sentence and committed the accused for sentence by a regional court having jurisdiction.

[7] It follows that in the present case, the conviction of the accused and his referral to the regional court for sentence, must stand.

[8] The next and final question is whether the regional court would be restricted to the mitigating and aggravating factors already adduced in the magistrate's court with a view to sentence. Once again, I am of the view that this cannot be the case. Section 274(1) of the CPA provides that a court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed. Where a magistrate has heard arguments in mitigation and thereafter refer the matter to the regional court for sentence, the regional court will therefore not be limited to the material placed before the trial magistrate and may consider any further evidence or submission placed before it.³ The regional court should simply proceed to finalize the matter.

[9] In the premises, the following order is made:

1. The conviction of the accused in the district magistrate's court is confirmed.
2. The regional court must proceed to finalize the matter in an unrestricted manner.

² Case no 50/2023 in the Gauteng Local Division, Johannesburg, dated 16 January 2024.

³ See in this respect the unreported judgment on review in *The State v Jerome Slingers*, Western Cape High Court, case no. 19/2023



4-01/2001
P.J. LOUBSER, J

I concur:



P. R. CRONJE, AJ