

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO: **CA&R 60/24**

Reportable: **YES** / NO

Circulate to Judges: YES / NO

Circulate to Regional Magistrates: YES / NO

Circulate to Magistrates: YES / NO

In the matter between:

THE STATE

and

H[...], K

Accused

Neutral citation: *The State v K H[...]* (Review No. 60/2024) (Victoria West Case No. 01/2024) (06 May 2025)

Coram: Nxumalo, J

Date of Judgment: 06 May 2025

ORDER

THE SENTENCE AND CONVICTION OF THE COURT A QUO HANDED DOWN ON 13 AUGUST 2024, ON THE OFFENDER IS HEREBY UPHELD.

JUDGMENT

Per: Nxumalo J

INTRODUCTION:

[1] This is an automatic review in terms of Section 302 of the **CRIMINAL PROCEDURE ACT** 51 of 1977.¹ On 13 August 2024 the offender, who at all material times hereto was a 14 years old male child offender,² was found guilty by the Victoria West District Magistrate Court of contravening the provisions of Section 3, read with Sections 1; 56; 56A; 57; 58; 60; and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment 32 of 2007.³

[2] The offender was legally represented and his guardian, being his biological mother, was present throughout the proceedings *a quo*.

OFFENDER'S STATEMENT IN TERMS OF SECTION 112(2) OF THE CPA AND VERDICT:

¹ Hereinafter referred to as "the **CPA**"

² Hereinafter referred to as "the **offender/KH**"

³ *per* CJ Abrahams, Acting Regional Magistrate

[3] Section 112(2)⁴ expressly stipulates if an accused or his legal adviser hands over a written statement by the accused into Court, in which the accused sets out the facts which he admits and on which he has pleaded guilty, the Court may, in lieu of questioning the accused under Section 112(1)(b),⁵ convict the accused on the strength of such a statement and sentence him as provided in the said subsection, if the Court is satisfied that the accused is guilty of the offence to which he has pleaded guilty: Provided that the Court may in its discretion put any question to the accused in order to clarify any matter raised in the statement.

[4] On 13 August 2024 the offender, his mother and his legal representative handed up a co-signed written statement into Court in which the accused set out the facts which he admitted and on which he has pleaded guilty. The Court *a quo* thereafter, in lieu of questioning the offender under Section 112(1)(b),⁶ convicted him on the strength of the said statement.

[5] Of significance is that the offender declared as follows, in relevant part:

“1 ...

2 ...

3. ... 19 September 2023 and at Kosmos street, Loxton in the district of Pixley kaSeme, within the Regional Division of the Northern, I did unlawfully commit an act of sexual penetration with the complainant Ms B, a 6year old female by inserting my penis into her anus without her consent.

4. I admit that on the date in question I was playing with the said complainant and other kids. I took the complainant under the bridge undress her and I also undress myself (sic). I asked her to

⁴ *ibid*

⁵ *ibid*

⁶ *ibid*.

lay on her stomach and climbed on top of her back. I then inserted my pennis (sic) into her anus and had sexual intercourse without her consent. Whilst I was busy having sex with the complainant another child caught us and went to call elderly people. I then stop and ran away.

5. *I admit that I had sexual intercourse with the said child who was 6 years old without her consent by inserting my penis into her anus.*
6. *I admit that my intention was to have sexual intercourse with the said child without her consent.*
7. *I admit that my actions were wrongful and punishable in a Court of law.*
8. *I had no right or permission to commit this offence.*
9. *I therefore regret my conduct and plead guilty freely and voluntarily without undue influence.*

This statement was made and signed in the presence of my guardian who is mother Ms D[...] H[...].”

- [6] Regard being had to the foregoing; I am of the opinion that the Court *a quo* was correctly satisfied that the accused is guilty of the offence to which he has pleaded guilty.

SENTENCE:

- [7] The offender thereafter was sentenced to compulsory residence in a child and youth care centre, in terms of Section 76 of the **CHILDREN'S ACT** 38

of 2005; providing a programme referred to in Section 191(2)(j) of the said Act;⁷ until he reaches the age of 21 years. He was therefore admitted to the De Aar Secure Care Centre, with due regard to the information obtained by the probation officer referred to in Section 71(3), *ibid*. The Court *a quo* also ordered that the sentence be brought to attention of the functionaries in the prescribed manner. It also ordered that the offender was to be immediately admitted to the said Centre and not to be held at any cell or lock-up. Further, it was ordered that the matter be retained on the Court *a quo*'s roll for one month i.e. 13 September 2024, to confirm whether the child was admitted accordingly.

- [8] The offender's mother is a single unemployed parent with three other children ranging from 12 to 19 years of age. He is the third born. The family resides at the offender's maternal grandparents' three-room brick house with a one-room shack. At all material times hereto, the offender was staying elsewhere with a friend. He is a child support beneficiary. His mother reported that the offender is addicted to dagga and dropped out of school in 2023.
- [9] According to the Presentencing Report on the offender, it was observed that he did not realise that he was causing pain to the victim because he was very thrilled when he said: "*Ek het lekker gevoel.*" When asked if the cries of the victim did not stop him, he said: "*Sy het nie gehuil nie, sy het ma net gesug.*"
- [10] It is clear from the foregoing that the offender has a criminal attitude. People with criminal attitudes think crime is part of life or out of their control and tend to make excuses for why they commit same. The offender seems to have been exposed to circumstances that forced him not to develop according to expected or morally acceptable milestones.

⁷ To wit: (a) Rhythm of Life; (b) Playing through the Forest; (c) Wakeup Call; and (d) In the Mirror.

Disturbingly, neither the offender nor his mother seems to have apologised to the victim or her family. The offender's mother is presenting herself as a victim of his transgressions.

VICTIM IMPACT REPORT:

- [11] The victim is the second born of three children ranging from 7 months to 12 years. She was interviewed by the Social Worker in the presence of her biological mother, Ms S[...]. According to the victim's mother, she described her ordeal as follows: She was walking with a friend to her mother's house from town. On their way, they encountered the offender and he chased after them shouting that he will show them something. When he got hold of the victim, he threatened her with a stick with which he hit her before raping her. The victim struggled to sleep after the incident and has flashbacks of same and visuals of the offender. She also struggled to work fast and tires easily. Her sleep has, however, now improved.

DETERMINATION:

- [12] It is so that the offender has committed a very serious Schedule III offence, which he has admitted committing and pleaded accordingly. The victim is a 7-year-old child. Whilst the damage of the offence might not be fully visible at present, it might resurface later in her development. It is so that children and young people who have been sexually abused can suffer a range of psychological and behavioural problems from mild to severe, in both the short and long term.
- [13] The Pre-Sentencing Report, however, states that the offender expressed feeling good and enjoying same. That he appears not to have been considerate of the victim's feeling or the fact that what he was doing to her

was wrong. The author of the report is of the view that the offender needs to be redirected from developing a more harmful behaviour that will put him more at risk and threaten the interests of the innocent members of society at large.

[14] It is so that the offender is guilty of a Schedule III offence, which damages cannot be compensated. To this extent, a fine as an option was correctly out of the question. Similarly, a suspended sentence is not a suitable alternative in view of the fact it is reported that the offender's mother has no control over his behaviour. Correctional supervision was also not deemed appropriate in the circumstances.

[15] The objectives of sentencing children to compulsory residence in children and youth care centres is to encourage them to understand the implications of, and be accountable for the harm caused. To promote an individualised response which strikes a balance between the circumstances of the child; the nature of the offence and the interests of society. It also ensures that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration.

[16] It is so that the Probation Officer has contacted the centre in question and has spoken to the responsible Social Worker who has indicated that there is space available should the offender be sentenced to compulsory residence. The centre in question also has a range of programmes that the offender could benefit from for his developmental needs.

[17] After considering the circumstances of the offender; the seriousness of the offence; the interests of the victim and society the Probation Officer recommended that the offender be sentenced in terms of Section 76 of the **CHILD JUSTICE ACT** 75 of 2008. It was also recommended that the

offender be placed at the De Aar Secure Care Centre for the period that would be determined by the Court *a quo*.

[18] All the foregoing has been taken into full consideration by the Court *a quo*. The proceedings in this case therefore appear to me to be in accordance with justice.

ORDER:

[19] In the premise, the following order must issue:

THE SENTENCE AND CONVICTION OF THE COURT A QUO HANDED DOWN ON 13 AUGUST 2024, ON THE OFFENDER IS HEREBY UPHELD.

JUDGE APS NXUMALO
NORTHERN CAPE DIVISION
KIMBERLEY

I Concur.

JUDGE A STANTON
NORTHERN CAPE DIVISION
KIMBERLEY