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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

CASE NO: CA&R115/2025

In the matter between

THE STATE

and

R[...] S[...] B[...]

REVIEW JUDGMENT

KRÜGER AJ:

[1] This is a review in terms of section 85(1) of the Child Justice Act 75 of 2008. The accused, who was a minor at the time of the commission of the offences, was convicted on 29 October 2024, on three charges: one of murder, and two charges in terms of the Firearms Control Act 60 of 2000, relating to unlawful possession of a firearm and ammunition, respectively.

[2] On 27 June 2025, the accused was sentenced to ten years' imprisonment on the murder charge, five years' imprisonment on the charge relating to the possession of a firearm, and three years' imprisonment on the charge relating to the possession of ammunition. The sentences were ordered to run concurrently. In addition, the court declared the accused to be unfit to possess a firearm

[3] I have considered the merits of the conviction of the accused, and I am satisfied that it is in accordance with justice.

[4] The question of whether the sentence is in accordance with justice requires closer scrutiny. The court *a quo* imposed direct imprisonment despite the recommendation in the pre-sentence report that a sentence of correctional supervision be imposed, which was supported by a finding that the accused was a suitable candidate for correctional supervision. While section 71(4) of the Child Justice Act permits the court to impose a different sentence than that recommended in the pre-sentence report, it determines that the court is to enter its reasons for imposing a different sentence on the record.

[5] The court *a quo* recorded its reasoning as follows: it emphasised retribution and deterrence as key purposes of punishment in relation to serious offences such as those of which the accused was convicted. While it acknowledged rehabilitation and prevention as further important purposes of punishment, it noted that these will play a smaller role in the imposition of a sentence for serious offences. The court noted the personal circumstances of the accused, including the support he has from his family and his stable family environment, his employment, his being a first-time offender, and his youth, as mitigating factors. While mindful of the need not to over-emphasise one of the factors of the *Zinn*-triad¹ above others, the sentencing court highlighted the seriousness of the offence and its prevalence in northern areas of Gqeberha, where the offences took place. In the court's view, the sentence imposed had to deter others and punish the accused, first and foremost. This, coupled with the court's reading of the victim impact statement documenting the deceased's

¹ Formulated in *S v Zinn* 1969 (2) SA 537 (A).

family's grief and confusion at her senseless murder, led it to conclude that sentences of direct imprisonment were appropriate.²

[6] In my view, the court *a quo*'s assessment does not do justice to the sentencing framework set out in Chapter 10 of the Child Justice Act. The sentences that were imposed took account only of the *Zinn* triad, without bearing in mind the additional principles set out in chapter 10, which were formulated particularly with child offenders in mind.

[7] Pertinent principles set out in section 69 of the Child Justice Act were not considered. For example, the court *a quo* failed to consider the accused's acceptance of responsibility for his actions as set out in the probation report. Moreover, the court failed to consider the reintegration of the accused into his family and community, and the available guidance and support, given its imposition of direct imprisonment. While acknowledging the accused's strong family ties, the court did not consider the role of the accused's family or community in his reintegration and rehabilitation. The court also did not take into account the fact that the accused, while living in the northern suburbs for many years, steered clear of gangsterism and illicit drugs, which plague the area. His deliberate move from the area after he completed Grade 12 in 2023, similarly, did not have an impact on its decision regarding sentence.

[8] Notably, the sentencing court cursorily mentioned that imprisonment should be used as a last resort, but alternative sentences, and particularly the recommendation of the probation officer to impose a sentence of correctional supervision, were not seriously considered. In *S v L*,³ the court held as follows in relation to correctional supervision as a viable alternative sentence for young offenders:

‘Our courts have stressed on numerous occasions that judicial officers should not hesitate, in appropriate cases, to make use of correctional supervision. It has already been imposed for very serious crimes, including murder: *S v*

² Transcribed record on sentence p 2-10.

³ 2012 (2) SACR 399 (WCC) para 26.

Booyesen 1993 (1) SACR 698 (A); *S v Potgieter* 1994 (1) SACR 61 (A); *S v Kleynhans* 1994 (1) SACR 195 (O); and *S v Ingram* 1995 (1) SACR 1 (A). In all of these cases the perpetrators were adults’.

The court also did not engage with the accused’s attorney’s submission to consider imposing correctional supervision in conjunction with a suspended sentence of imprisonment as permitted by section 69(2) of the Child Justice Act.

[9] By emphasising deterrence⁴ and retribution, the court in fact saw imprisonment as the only appropriate sentence for serious offences and effectively treated the accused as an adult. In doing so, the court lost sight of the constitutional injunction regarding the paramountcy of the child’s best interest, captured in the following terms by the Supreme Court of Appeal in *S v N*:⁵

‘But the clear constitutional injunction is that we must weigh in the mix the fact that he was only seventeen. Prison must therefore be a “last resort”. This bears not only on whether we choose prison as a sentencing option, but on the sort of prison sentence we impose, if we must. So if there is a legitimate option other than prison, we must choose it; but if prison is unavoidable its form and duration should also be tempered. Every day he spends in prison should be because there is no alternative.’

[10] Non-compliance with the principles of sentencing as provided for in Chapter 10 is irregular and a breach of the principle of legality.⁶ The sentences of imprisonment must accordingly be set aside.

[11] Since the accused is imprisoned, it is evident that any further delay in the matter will be prejudicial to him. Accordingly, the matter proceeded without further reasons provided by the presiding magistrate to a full court for determination.

⁴ Terblanche *A Guide to Sentencing in South Africa* 3rd ed (2016) 362 expresses the view that ‘deterrence plays no role in the determination of an appropriate sentence for a child offender’.

⁵ 2008 (2) SACR 135 (SCA) para 39. See also *Centre for Child Law v Minister of Justice and Constitutional Development and Others (National Institute for Crime Prevention and the Reintegration of Offenders, as Amicus Curiae)* 2009 (2) SACR 477 (CC) para 31.

⁶ *S v RS* 2012 (2) SACR 160 (WCC) para 30; *S v Gxaleka* 2013 (2) SACR 399 (ECB) paras 17-18.

[12] Section 304(2) of the Criminal Procedure Act empowers the court to, among other things, substitute the sentence imposed with an appropriate sentence or to remit the matter to the magistrate's court for sentencing while suspending the execution of the sentence, admitting the person to bail.

[13] In this instance, the full record was placed before this court, including the pre-sentence report and correctional supervision report. I am thus of the view that the court has adequate information to substitute the sentence of the magistrate's court.

[14] There is no doubt that the accused was found guilty of serious offences, which plague the northern suburbs of Gqeberha. Her family is devastated by her sudden, unnecessary death. The family remains in mourning. The deceased's aunt forgave the accused in her heart and trusted that he would face justice in the life hereafter.

[15] The accused was out with friends/acquaintances in the early hours of 15 October 2023. They had all consumed alcohol. The accused's version, which could not be refuted by the state witness as she was too far from the group to see or hear what happened, was that a friend handed him a firearm and told him it was real. The accused thought it was a toy. When he asked again whether it was real, the friend and the deceased encouraged the accused to pull the trigger. He did so, and the bullet from the loaded firearm struck the deceased in the head, causing her death. Shocked by what had happened, he handed the gun to his friend and ran home, asking his family members to take him to the police station. Shortly thereafter, he was arrested at home. He admitted that he foresaw that the firearm was real, but he still pulled the trigger, reconciling himself with the consequences that followed.

[16] The offences are serious, and had the accused been an adult, imprisonment would be the only option. In light of the sentencing principles of the Child Justice Act, it is necessary to consider whether a suitable alternative exists. I take the interrelated charges together for the purposes of the sentencing.

[17] The accused was found to be a suitable candidate for correctional supervision. The accused was 17 years old when he committed the crimes. He is a first-time offender. He grew up in a stable and loving home. His family supported him throughout the trial. Family members described him to the probation officer as honest, kind and respectful. He has expressed remorse for his actions and explained that he suffers daily feelings of guilt for his actions. He obtained a learnership after completing Grade 12 and moved away from the northern areas to Makhanda. In Makhanda, he lived with his paternal family and contributed his income to the expenses of the family.

[18] Sachs J in *S v M (Centre for Child Law as Amicus Curiae)*⁷ explained that correctional supervision, in appropriate cases, can enhance the chances of rehabilitation of an offender and protect society better than imprisonment in overcrowded prisons. Family life is not disrupted as it would in the instance of imprisonment, and rehabilitation takes place in the community.

[19] Importantly, a sentence of correctional supervision is not a sentence that is more lenient than a sentence of direct imprisonment.⁸ Conradie J, quoted with approval by Sachs J in *S v M*, stated the following about correctional supervision:

‘In some ways it is harder than imprisonment. A cynic once said that the easiest life on earth is being a soldier or a nun: you only have to obey orders. Prison is like that. A model prisoner is the one who best obeys orders. These are not ideal circumstances, generally, for the regrowth of character. Correctional supervision gives an offender greater scope for regrowth of character. It involves a good deal of psychological strain, it takes a great deal of restraint and determination on the part of a probationer. It can be very stressful. A probationer does not have his freedom - far from it - but he is not cut off from the community altogether. His support systems are not destroyed and in this way his rehabilitation prospects are enhanced. Moreover, there is the benefit that society does not lose the skills of someone who is able to

⁷ 2007 (2) SACR 539 (CC) paras 61-63.

⁸ *S v R* 1993 (1) SACR 209 (A) 221h; *S v L* paras 27-28.

maintain himself and his dependants, as well as the family unit. Community service, which goes hand in hand with correctional supervision, is beneficial.'

[20] In my view, a sentence of direct imprisonment will remove the accused from the family environment and support and may negatively impact his rehabilitation and reintegration in the community. With the Child Justice Act emphasising the latter, I am satisfied that lengthy community service is an appropriate alternative sentence to direct imprisonment.

[21] Section 69(2) of the Child Justice Act permits the combination of different sentences. Deterrence, while not the main purpose of sentencing of young offenders, will be served by the imposition of a suspended sentence of imprisonment, coupled with correctional supervision. In my view, a sentence of imprisonment of 10 years, wholly suspended for 5 years on condition that the accused is not convicted of any offence of which violence is an element during the time of suspension.

[22] I accordingly make the following order:

- a. The conviction of the accused is confirmed.
- b. The sentences imposed by the Magistrate are set aside and replaced with the following:

I The accused is sentenced to 10 years' imprisonment, wholly suspended for 5 years on condition that the accused is not convicted of any offence of which violence is an element during the time of suspension.

II The accused is sentenced to a period of three years of correctional supervision as provided in section 276(1)(h) of the Criminal Procedure Act, read with section 75 of the Child Justice Act. The sentence is subject to the following conditions:

- i The accused shall be under house detention at 3[...] B[...] St, Ghost Town, Makhanda, when not at his employment or seeking employment if unemployed, or as directed by the responsible correctional officer,

- ii The accused is restricted to the magisterial district of Makhandla.
- iii The accused, if unemployed, shall seek employment, take up and remain in employment;
- iv The accused shall perform community service of 16 hours per month throughout serving his sentence, at Grahamstown Community Corrections, on Sundays from 8h00-12h00 under the supervision of and direction of the responsible officer;
- v The accused shall participate in treatment, development, mediation and restorative justice programmes as directed by the responsible correctional officer.
- vi The accused shall not abuse alcohol or illegal drugs for the duration of the sentence, and avoid places and gatherings where these are consumed.
- vii The accused shall not commit a criminal offence while serving this sentence.
- viii The accused shall be subject to monitoring by correctional supervision officers by means and at times as deemed suitable by the officers.
- III The accused is declared unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.

R Krüger AJ
Acting Judge of the High Court of South Africa

VP Noncembu J
Judge of the High Court

29 July 2025