



**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA**

**High Court Ref No.182/25
Magistrate Serial No. 32/25**

In the matter between:

THE STATE

And

RVR

Accused

JUDGMENT- 5 FEBRUARY 2026

LEKHULENI J (SLINGERS J Concurring):

Introduction

[1] This case comes before me for review under section 85 of the Child Justice Act ("the CJA"), read with Chapter 30 of the Criminal Procedure Act 51 of 1977 ("the CPA"). The accused was convicted on 12 June 2025 by the Child Justice Court sitting at Wynberg Regional Court on a charge of Attempted Murder. Pursuant to a plea and sentence agreement, the accused was subsequently sentenced to six years imprisonment, of which two years were suspended for a period of five years on condition that the accused is not convicted of Attempted Murder or any offence involving violence against the body of another person, committed during the period of

suspension. The accused was 17 years old when the offence was committed and was 18 years old at the time of sentencing. The accused was *ex lege* deemed unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.

[2] This matter is subject to automatic review in terms of the provisions of section 85 of the CJA. This court is enjoined to consider whether the proceedings before the Child Justice Court appear to be in accordance with justice as envisaged in section 85 of the CJA, read with section 303 of the CPA. I briefly set out the background to the matter before I consider the merits thereof.

Factual Background

[3] It is the state's case that upon or about 25 September 2019, and at or near Manenberg in the Regional Division of the Western Cape, the accused unlawfully and intentionally attempted to kill Neil Fredericks, a male person, by shooting him with a firearm. The accused was legally represented by an attorney throughout the proceedings. A plea and sentence agreement in terms of section 105A of the CPA was entered into between the state and the defence. At the hearing on 11 June 2025, the accused pleaded guilty to the charge, and the plea and sentence agreement was disclosed to the court and read into the record. The trial court found the sentence just and imposed it in accordance with the agreement.

[4] The facts gleaned from the plea and sentence agreement are that on 25 September 2019, the accused saw the complainant standing by the corner of Irvine Street, Manenberg. The accused had heard from his friends that the complainant had been looking for him since they had argued days earlier. At that time, the accused had a firearm. The accused alleges that he feared the complainant and drew the firearm from his waist and pointed it at the complainant. The complainant saw the accused and started running away from him, and the accused fired shots at the complainant.

[5] The accused stated that he noticed bullets striking the complainant on his leg and arm, and that the complainant fell to the ground. The accused then turned back and ran away in the opposite direction. He later learned that the complainant was taken to the hospital and that the police were looking for him. The accused fled from Manenberg

and went to live with his father in Mitchells Plain. The accused was later arrested by the police for shooting the complainant. The accused admitted that the complainant sustained serious injuries because of his actions. He appreciated the fact that shooting the complainant could have resulted in killing him. The accused also admitted that at all material times, he knew that his actions were wrongful and punishable in law. He confirmed that the sentence set forth in the plea and sentence agreement was mutually agreed upon and a just sentence.

[6] The probation officer, Mr Mapekula ("Mapekula"), compiled a pre-sentence report as envisaged in section 71 of the CJA. In his report, Mapekula noted that the accused was not a first offender as he had previously been arrested and charged with assault with intent to do grievous bodily harm. However, this criminal case against the accused was diverted, and the accused attended the Rhythm of Life Diversion Program. The accused reported to Mapekula that he dropped out of school while he was in Grade 8 because of the high rate of gang violence in the area. The accused also reported that it was hard for him to attend school because the school was in another area of Manenberg, and he was not allowed to attend school.

[7] His parents are divorced and are living separately. His father lives in Mitchell's Plain, and his mother lives in Manenberg. The accused also reported that he has a close-knit relationship with his family. After committing the alleged offence, the accused ran away from Manenberg and went to live with his father in Mitchell's Plain. His mother went to fetch him and took him to the police, where the accused was arrested. The accused reported to Mapekula that he was using Mandrax and Tik before he was arrested and that he had money to buy illegal substances because he was working with his biological father and uncle.

[8] Mapekula recorded the accused's explanation of the incident in her report. Notably, she italicised this aspect and wrote this explanation in the first-person singular. For completeness, I deem it prudent to reproduce verbatim the record of the incident as detailed in Mapekula's report.

"INCIDENT

The incident happened during September 2024 when I shot and injured the victim. I shot the victim twice on his leg and his upper body. I am not sure exactly where I shot him. I shot the victim because the guy that gave me the gun to shoot the victim is part of a gang member and the victim is also part of a gang member. The guy that gave me the firearm to shoot the victim threatened me that if I do not shoot the victim he is going to shoot and kill me. I was scared of my life because I know the guy is part of a gang member and he will shoot me if I do not do as requested. On that day, we were smoking during the day, and I was intoxicated when I shot the victim. I shot him and I threw the gun on the floor, and I ran away because I was scared. The guy that sent me to shoot the victim took the gun and he also ran away. I heard from my mother that the victim and the guy who sent me to shoot the victim are both arrested.

I am not part of a gang. I was only smoking illegal substance when the guy asked me to shoot the victim. I did not know him, I only saw him few times and he is not my friend. I do not even know his name as he was not my friend.

I really regret what I did because I almost killed someone and I also ruined my life because now I have a criminal record that I did not plan. I am not part of any gang in the area because I know that they kill each other. I was in Bonnytown CYCC and they moved me to Pollsmoor Prison because I turned 18 years in April 2025. This is not a nice place to be as I fear for my life and sometimes people fight on (sic) the cells and I am scared of them. After shooting the victim I ran to Mitchell's Plain where my biological father resides. My biological mother came and fetched me from Mitchell's Plain after she heard that I shot the victim. She took me to Manenberg SAPS and I was arrested."

[9] Having considered all the psychosocial aspects and various sentencing options, Mapekula recommended that the court impose a sentence of correctional supervision in terms of section 276(1)(h) of the CPA. This recommendation was also supported by the Correctional Officer, Ms Dzebedzebe-Nyikisa, who prepared a Correctional Report in terms of section 276A(1)(a) of the CPA and found the accused to be a suitable candidate for correctional supervision. Despite the recommendation, the trial court imposed a sentence of six years' imprisonment and suspended two years of the sentence for five years on normal conditions. The trial court imposed the custodial sentence in terms of the plea and sentence agreement, without entering reasons on

the record for imposing a sentence different from that recommended by Mapekula, as envisaged in section 71(4) of the CJA.

[10] After perusing the record, I was concerned about the accused's conviction, particularly given the version the accused gave to Mapekula three (03) days before the hearing of the matter. I also noted from the record of proceedings that this issue was not raised with the accused or his legal representative when the report was handed in and marked as Exhibit C. I was particularly concerned with the defence of duress raised by the accused in the report in respect of the charges levelled against him. According to his version recorded by Mapekula, the accused feared for his life. He shot the complainant because the person who gave him the firearm, a gang member, threatened him that if the accused did not shoot the complainant that he would shoot and kill the accused. The accused stated that he was scared and feared for his life because he knew that the person who gave him the firearm was a gang member. In addition, the accused stated that on that day, they were smoking during the day, and he was intoxicated of the illegal substance when he shot the victim.

[11] Pursuant thereto, I addressed a query to the presiding officer in terms of s 304(2)(a) of the CPA, asking her to comment on the discrepancy of the versions given by the accused. I also brought to the attention of the presiding officer that I have noted that the court questioned the accused about whether he admitted the allegations in the charge sheet, to which he pleaded, and whether the agreement was entered into freely and voluntarily, to which the accused affirmed. However, I drew her attention to the fact that the accused was not confronted with the allegations in the probation officer's report, which formed part of the record as Exhibit C in the proceedings. I also drew the presiding officer's attention to the fact that these allegations raised the question whether the accused appreciated the consequences of his conduct at the time the offence was committed and whether he had the necessary intention to commit the offence.

[12] In response, the magistrate indicated that a probation officer's report in this matter was obtained as required in all cases dealing with juveniles. Notwithstanding the contents referred to in Mapekula's report, the accused proceeded to instruct his attorney to enter into the plea and sentence agreement. The presiding magistrate

stated that the accused pleaded to the charge after the court was satisfied that he understood the charge against him. The contents of the agreement were read into the record. The court was satisfied that the CPA provisions were fully complied with. The magistrate noted that the court was also satisfied that the accused was informed of his rights and that all required consultations had been conducted. Furthermore, the learned magistrate stated that the court was satisfied that the technical statutory requirements were met and proceeded to question the accused to confirm that the accused understood the charge, the facts of the crime, and that he acted freely and voluntarily, being of a sober mind in concluding the agreement with the prosecution.

[13] In addition, the presiding officer explained that the plea-bargaining process is consultative and participatory, involving prosecution authorities and legal representatives who have a vested interest in protecting their respective interests. In the magistrate's view, section 105A procedures offer the accused greater control of the proceedings. Only the accused can decide whether to plead guilty to a charge. According to the magistrate, the accused exerted control and influence over the process by speeding up the trial process and sentencing. The magistrate concluded her response by submitting that the conviction and sentence should stand.

Legal principles and discussion

[14] Section 105A of the CPA provides the statutory framework for negotiating plea and sentence agreements. This process is characterised by a give-and-take exercise, in which the state obtains a plea of guilty and the accused, on the other hand, receives a lesser sentence than might otherwise be imposed in a summary trial. *S v Groenewald and Others* (A668/2010) [2019] ZAWCHC 170 (10 December 2019) para 19. The purpose of the plea-bargaining process is to afford the parties, in advance, an opportunity to make an informed decision regarding whether to agree to and abide by the agreement. As correctly pointed out by the presiding magistrate in her response, this process entails consultation with all the people involved in the offence, the accused, the complainant, the victim and stakeholders for the proper determination of a just sentence. *S v Jansen* (20043/14 & 229/14) [2015] ZASCA 151 (2 October 2015) para 16.

[15] The court may not participate in the negotiations as contemplated in s 105A (1) and s 105A(3). However, judicial approval of the plea and sentence agreement is required. (See s 105A(7)(a) as read with s 105A(8)). The court is obliged to control the outcome of the negotiations as detailed in subsections 105A(4) to (9). In *S v Esterhuizen and Others* 2005 (1) SACR 490 (T) at 494J to 495A-B, the court delineated the function of the court in considering the justness or unjustness of a plea and sentence agreement made under s 105A. The court observed that the function of the court encompasses the following:

'1. The consideration of the well-known triad as set out in S v Zinn 1969 (2) SA 537 (A).

2. The taking of a broad overview of the facts admitted and the crimes admitted to having been committed together with the proposed sentence to be imposed, all with a view to establishing whether the sentence agreed upon and its effective content bear an adequate enough relationship to the crimes committed taking into account all of the agreed facts, both aggravating and mitigating, so that it can be said that justice had been served.'

[16] I must emphasise that the provisions of s 105A(6)(a) of the CPA are explicit and peremptory. The section states that the court shall question the accused to establish whether:

'(i) he or she confirms the terms of the agreement and the admissions made by him or her in the agreement;

(ii) with reference to the alleged facts of the case, he or she admits the allegations in the charge to which he or she has agreed to plead guilty; and

(iii) the agreement was entered into freely and voluntarily in his or her sound and sober senses and without having been unduly influenced'.

[17] Section 105A(6)(a)(iii) makes it mandatory for the court to question the accused to establish whether the agreement was entered into freely and voluntarily in his or her sound and sober senses and without having been unduly influenced. This subsection, in my view, ensures that the court is satisfied not only that the accused committed the act, but also that he did so unlawfully and with the necessary *mens rea*. In this matter, the admissions made by the accused to the probation officer, which were included in

her report and submitted to the trial court, raised significant concerns. The accused made exculpatory statements concerning the alleged offence when he consulted with the probation officer three days before the hearing of the matter. The court questioned the accused in terms of s 105A(6)(a)(iii) of the CPA and concluded that the accused admitted all the elements of the offence and to the terms of the agreement. Unfortunately, the court ignored the defence of compulsion and the alleged lack of criminal capacity due to intoxication raised by the accused in his explanation to the probation officer.

[18] At the very least, the presiding officer should have questioned the accused on why he made the report to Mapekula and whether there was any truth therein. Furthermore, the presiding officer should have been alive to the fact that although the accused had just turned 18 years, she was dealing with a child offender which required more than a tick box exercise when determining compliance with the provisions of section 105A of the CPA.

[19] It must be stressed that the report of the probation officer was part and parcel of the plea and sentence agreement. It was admitted by the court when it considered sentence and marked it Exhibit C. Significantly, a pre-sentence report plays a vital role in the sentencing of a child offender. Thus, a child justice court must consider a report prepared by a probation officer before sentencing. Section 71(4) of the CJA re-enforces this conclusion. The contents of the report are essential to enable the court to gain a deeper understanding of the relevant social and psychological forces underlying the accused's behaviour, to determine whether the proposed sentence is just, balancing the interests of the accused, the victim, and society in general.

[20] Section 71(1)(b) of the CJA sets out two situations where the court may dispense with a pre-sentence report, namely: where a child is convicted of an offence referred to in Schedule 1 or where requiring the report would cause undue delay in the conclusion of the case, to the prejudice of the child. However, it must be stressed that these exceptions are not available when a sentence of imprisonment or compulsory residence in a Child and Youth Care Centre ("CYCC") is imposed. In other words, no child justice court sentencing a child may impose a sentence involving compulsory

residence in a CYCC or imprisonment, unless a pre-sentence report has first been obtained.

[21] Whilst I appreciate that the court questioned the accused whether he confirmed the terms of the agreement and the admissions therein, I am of the view that the court a quo did not consider the contents of the probation officer's report. This conclusion is borne out by the following: Throughout the proceedings, the court a quo did not question the accused on the defence of compulsion that he raised in the report. Secondly, the probation officer and the correctional officer recommended that a sentence of correctional supervision was a suitable sentence for the accused. Significantly, a sentence of correctional supervision would have exposed the accused to various life skills programs, especially considering the allegation that the accused had started to use drugs, particularly Tik and Mandrax, when he was arrested. The court did not consider this during sentencing, as it did not engage the prosecutor and the defence on why this sentence was not considered a sentencing option, despite both reports recommending it.

[22] It appears that the presiding officer failed to consider these recommendations and simply accepted the contents of the plea and sentence agreement without properly considering whether it would result in a just and equitable sentence. The presiding officer was required to satisfy herself of the guilt of the accused, notwithstanding the plea and sentence agreement. This is clear from the contents of section 105A(6)(b) of the CPA. Section 105A(6)(a) of the CPA specifically obliged the presiding officer to question the accused on whether he admitted the facts and allegation in the charge to which he pleaded. This inquiry would have required the presiding officer to question the accused on his report to Mapekula.

[23] Notably, correctional supervision is a non-custodial sentence which is imposed upon an accused person under strict conditions, such as house arrest, community service, rehabilitation and compulsory attendance of programmes in relation, inter alia, to combating drug and alcohol abuse. *S v Joseph* 2021 (1) SACR 450 (WCC) para 10. In *S v R* 1993 (1) SACR 209 (A), Kriegler AJA, as he then was, held, in relation to the provision of correctional supervision as a sentencing option, that the legislature has clearly distinguished between two types of offender, namely, those who ought to be

removed from society by means of imprisonment, and those, although deserving of punishment, that should not be so removed from society. See also *S v Grobler* 2015 (2) SACR 210 (SCA). In the present matter, the correctional officer noted in her report that, with strict monitoring, intervention programs, and community service, further criminal activities may be prevented.

[24] I am mindful that this was a plea and sentence agreement. The sentence imposed was the result of a bargain exercise between the state and the defence. Notwithstanding, the sentence imposed still had to be constitutionally compliant. As this court mentioned in *S v H.L and Others* (445/2023) [2024] ZAWCHC 66 (4 March 2024) para 23, a trial court should not take a plea and sentence agreement at face value. The courts are not there to act as a mere rubber stamp to what the state and the defence have agreed upon. Section 105A (7) of the CPA enjoins a court if it is satisfied that the accused admits the allegations in the charge and that he is guilty of the offence in respect of which the agreement was entered into to proceed to consider the sentence agreement. In considering whether the sentence is just, the court must consider the triad, which invariably involves the personal circumstances of the accused, articulated in the probation officer's report.

[25] The fact that a plea and sentence agreement has been entered into does not, *per se*, close the door to the hearing of evidence to clarify certain aspects and ensure that justice is done and the sentence is just. Section 105A(7)(a) of CPA provides that if the court is satisfied that the accused admits the allegations in the charge and that he or she is guilty of the offence in respect of which the agreement was entered into, the court shall proceed to consider the sentence agreement. The court may direct relevant questions, including questions about the previous convictions of the accused, to the prosecutor and the accused; and hear evidence, including evidence or a statement by or on behalf of the accused or the complainant. This section buttresses the well-established principle in our law that in considering sentence, a court is not confined or limited to those facts placed before it by the parties. *S v Dlamini* 1992 (1) SA 18 (A) at 31C.

[26] In other words, the court is not restricted to the four squares of the plea and sentence agreement. To my mind, section 105A(7)(a), lends credence to the adage

that justice must manifestly be seen to be done. Moreover, s 271 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.' While s 112(3) of the CPA provides that nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

[27] Evidently, s 105A(7)(a), like s 274(1) and s 112(3) of the CPA, empowers the court and makes it the duty of the court to call witnesses of its own accord where the parties have failed to provide sufficient information for purposes of considering the sentence agreement. In this case, the prosecutor and the defence attorney remained silent on the defence of duress that the accused raised in the report of the probation officer. Additionally, the parties concluded a plea and sentence agreement that was at variance with the recommendation of the probation officer. The state and defence submitted the probation officer's report for consideration by the trial court.

[28] It bears emphasis that the accused was a child offender when the crime was committed. The report and the recommendation of the probation officer was crucial in the determination of a just sentence. A victim impact statement as envisaged in section 70 of the CJA was also significant and should have formed part of the plea and sentence agreement and provided to the court in terms of section 105A(7)(a) of the CPA. It is important to note that although victim impact statements have been used previously to inform the court about the impact of the crime on the victim, the CJA is the first South African Act to provide a means whereby the impact of the offence on the victim may be placed before the sentencing court in the form of a victim impact statement. See Corrie L, Van Niekerk J and Louw E, *A Practical Approach to the Child Justice Act* (2016) at 199.

[29] It is my firm view that in a case like this, where the plea and sentence agreement proposed a sentence that differed completely to the one suggested by the probation officer, it was instructive for the court to call the probation officer in terms of section 105A(7)(b)(i)(bb) of the CPA to give evidence under oaths in considering the custodial

sentence or a different sentence suggested by the state and the defence. Simply put, in determining whether the sentence is just in terms of section 105A(8), the court was duty bound to have regard to the general principles of sentencing.

[30] I repeat, the probation officer should have been called to provide evidence on the conflicting accounts given by the accused, as well as to assess the potential consequences of the proposed custodial sentence proposed in the plea and sentence agreement. This was particularly relevant given that the accused was a child offender at the time the offense was committed. Crucially, it was instructive on the court to question the accused or sought clarity from the state and the defence regarding the contradiction between the two versions.

[31] As foreshadowed above, the trial court imposed a custodial sentence which was partly suspended. The sentence imposed was contrary to the recommendations of the probation officer and the correctional officer. I am mindful that a recommendation in a pre-sentence report does not bind a court, as sentencing is a judicial function. See *Centre for Child Law v Minister of Justice and Constitutional Development and Others* 2009 2 SACR 477 (CC) at para 88: However, in terms of section 71(4) of the CJA, where recommendations are not followed, the duty is on the court to explain why it impose a sentence which differs from what was recommended in the pre-sentence report. The fact that the sentence is reached through a pre-sentence agreement does not absolve the court of this judicial injunction. The trial court did not address this aspect or give reasons for rejecting the probation officer's recommendation, other than stating that the proposed sentence was just.

[32] On a conspectus of all the facts, it was, in my view, instructive for the trial court to engage the accused on the version which he gave the probation officer three days before the date of trial. Importantly, the probation officer's report formed part of the negotiations between the state and the defence during the bargaining process, which resulted in the sentencing agreement. The probation officer's report was handed in by the parties and marked exhibit C by the court. By handing the report as part of the evidential material, the court was invited to consider it in determining whether the sentence was just. It is concerning that the prosecutor and the attorney who represented the accused remained silent on the glaring inconsistency in the accused's

version. This inconsistency is critical and goes into the heart of the accused's guilty plea. It raises crucial questions about the admissions made in the plea and sentencing agreement. In my view, this is an irregularity that vitiates the proceedings before the court a quo.

[33] It cannot be said that the proceedings before the trial court were in accordance with justice when the accused raised a defence of compulsion and lack of criminal capacity in documents admitted as evidence, which contradicted his admissions in the plea and sentence agreement. By parity of reasoning, if the accused pleaded guilty in terms of section 112 of the CPA and at sentencing stage a probation officer provides evidence of the accused negating his guilty plea, in such a case, it would be instructive for the court to question the accused of those aspects and where necessary enter a plea of not guilty.

[34] Finally, I am also concerned with the ancillary order the court made under section 103(1) of the Firearms Control Act, which deemed the accused unfit to possess a firearm upon conviction of Attempted Murder. This ancillary order was incorporated in the plea and sentence agreement. The court did not make a determination as envisaged in section 103(1). For the sake of clarity, section 103(1)(g) of the Firearms Control Act provides as follows:

'Unless the court determines otherwise, a person becomes unfit to possess a firearm if convicted of any offence involving violence, sexual abuse or dishonesty, for which the accused is sentenced to a period of imprisonment without the option of a fine...' (emphasis added)

[35] On the other hand, the relevant part of section 103(2) of the said Act provides as follows:

'A court which convicts a person of a crime or offence referred to in Schedule 2 and which is not a crime or offence contemplated in subsection (1), must enquire and determine whether that person is unfit to possess a firearm.'

[36] The two subsections make it abundantly clear that the court and only the court must determine the suitability of an accused person to possess a firearm after a conviction on the offence mentioned in the section. Expressed differently, where an accused person is convicted of an offence envisaged in section 103(1), it remains the court's duty to determine whether the automatic deeming provision takes effect or not. This, in my view, applies equally in plea and sentencing agreement. Section 103 is an empowering provision that enjoins a court to determine or hold an inquiry on the suitability of an accused person to possess a firearm after conviction. I do not understand section 105A of the CPA to be divesting or arrogating the court of its judicial function to conduct an inquiry particularly in matter involving a child offender.

[37] To hold otherwise, in my view, would not only amount to an improper exercise of a discretion but would also amount to an abdication of a judicial function to the parties. Even if I err, in this regard, it is my firm view that the accused was still young and vulnerable when he committed the offence and that it was not in the interest of justice in these circumstances to make such an order in terms of section 103(1) of the Act. Perhaps it is apposite to remind ourselves that different considerations apply to child offenders as opposed to adult offenders. The law should generally distinguish between adults and children. See *Centre for Child Law v Minister of Justice and Constitutional Development and Others* 2009 (6) SA 632 (CC) at paras 26-9. An order in terms of section 103 of the Firearms Control Act against a child offender without a proper consideration of the effect of such order bears serious consequences for the child.

[38] In *J v National Director of Public Prosecutions and Another* 2014(2) SACR 1 (CC), the Constitutional Court had to consider the constitutionality of including the particulars of a child sex offender on the National Register for Sex Offenders in terms of section 50(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 ('the Sexual Offences Act'). Section 50(2)(a) of the Sexual Offences Act provided that a court 'must make an order to include the particulars of a person convicted of a sexual offence against a child or person who is mentally disabled on the National Register for Sex Offenders. The provision required that registration follows automatically from conviction of and sentencing for the particular crimes. The court found that this infringes the best interests of the child. The court noted that the opportunity for an individuated response to the particular child offender, taking into

account the child's representations and views, is excluded both at the point of registration and in the absence of an opportunity for review.

[39] Importantly for present purposes, the court found that affording courts a discretion and the concomitant opportunity to the child offender to lead evidence and make argument on the question of registration would permit the possibility of greater congruence between the limitation and its purpose. Further, the court held that where a court decides on matters affecting children, discretion plays an important role in allowing for an individuated response to meet the child's best interests. The court found that section 50(2)(a) of the Sexual Offences Act unconstitutional with respect to child offenders. The court limited the declaration of invalidity to child offenders.

[40] In my judgment, the same reasoning holds sway in this matter. Declaring a child offender unfit to possess a firearm without a determination by the court as required by the peremptory provisions of section 103 of the Firearms Control Act, violates the child's best interests envisaged in section 28 of the Constitution. The inclusion of this ancillary order in the plea and sentencing agreement was, in my view, subject to judicial scrutiny and oversight.

[41] I am mindful that the accused may have served part of his sentence. Should the state again institute charges against the accused and the accused is properly convicted, the trial court should consider the sentence he has already served. *S v Ndzishe & another* 2023 (2) SACR 419 (WCC) para 30. However, the parties' attention is drawn to the provisions of section 105A(10)(c) of the CPA that the prosecutor and the accused may not enter into a plea and sentence agreement in respect of a charge arising out of the same facts where a plea of not guilty was entered.

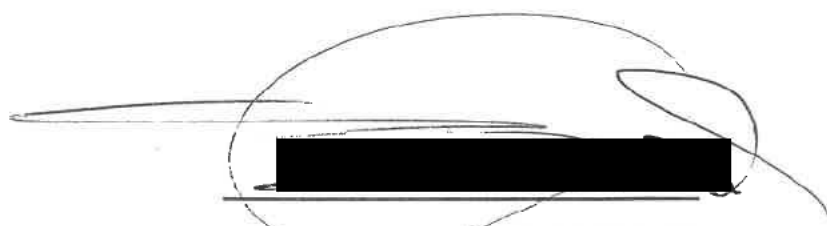
Order

[42] Given all these considerations, I would propose the following order:

42.1 The conviction and the resultant sentence are hereby set aside.

42.2 The ancillary order in terms of section 103(1) of the Firearms Control Act 60 of 2000 is hereby set aside.

42.3 The matter is remitted back to the Regional Court, Wynberg, for trial *de novo* before another Regional Magistrate, should the state still wish to pursue charges against the accused.



LEKHULENI JD
JUDGE OF THE HIGH COURT

I agree, and it is so ordered:



SLINGERS H
JUDGE OF THE HIGH COURT