



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

High Court reference no: 112/2026

High Court review case no: 122/2026

In the matter between:

THE STATE

and

W[...] D[...] J[...]

Accused

Coram: BARENDSE J *et* ADAMS AJ

Delivered on: 08 September 2026

Summary: Criminal procedure – sentence- District Court – Imposition on same count of 36 months’ correctional supervision under s 276(1)(h) of CPA –

combined sentence competent: correctional supervision district from imprisonment and combination expressly permitted by s276(3)(a) – Magistrate accordingly not exceeding penal jurisdiction

ORDER

1. The conviction and sentence are reviewed and set aside.
 2. The matter is remitted to the magistrates' court for proceedings de novo before a magistrate other than the magistrate who presided over the original proceedings.
 3. Any further proceedings must be conducted in accordance with the Child Justice Act 75 of 2008.
 4. The accused's identity must continue to be protected in accordance with the applicable provisions governing the confidentiality of child justice proceedings.
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JUDGMENT: REVIEW

ADAMS, AJ (BARENDSE J concurring):

[1] This matter came before this Court purportedly by way of automatic review. The accused, who was 16 years old at the time of sentence, was

convicted following a plea of guilty supported by a written statement in terms of s 112(2) of the Criminal Procedure Act 51 of 1977 (“the CPA”). A non-custodial sentence was imposed, and the matter was postponed to a future date so that the accused’s compliance with the conditions of sentence could be monitored.

[2] Upon consideration of the record, queries were directed to the magistrate concerning:

- (a) whether the proceedings were subject to automatic review under s 85 of the Child Justice Act 75 of 2008 (“the CJA”);
- (b) the application of the CJA during the sentencing proceedings;
- (c) material inconsistencies in the accused’s s 112(2) statement concerning the ownership or lawful possession of the property forming the subject of the charge; and
- (d) the identity and gender of the complainant.

[3] The magistrate responded candidly. She accepted that the sentence imposed did not fall within the category of sentences contemplated in s 85 of the CJA and that the matter had therefore been submitted for automatic review in error. She further accepted that the inconsistencies in the plea statement had not been clarified and that the requirements of s 112 had not been satisfied. In her view, the conviction and sentence should be set aside and the matter remitted for trial de novo before another magistrate.

Review jurisdiction

[4] Section 85 of the CJA provides for the automatic review of certain sentences imposed upon children. In broad terms, the section applies where a child is sentenced to any form of imprisonment or to compulsory residence in a child and youth care centre providing an appropriate programme under the Children’s Act 38 of 2005. The sentence imposed in the present matter was neither of those forms. The proceedings were therefore not automatically reviewable under s 85.

[5] That conclusion does not, however, deprive this Court of the power to intervene. Section 304(4) of the CPA provides that, where it is brought to the

attention of the High Court that criminal proceedings in a magistrates' court were not in accordance with justice, the Court may exercise the same powers as it possesses in automatic-review proceedings. This is the special-review jurisdiction exercised by this Division in *S v Muridzo; S v Ramafikeng*.¹[1] The irregularities in the present matter appear from the record itself and have been acknowledged by the magistrate. This Court is accordingly entitled, and obliged, to consider whether the proceedings were in accordance with justice.

The plea proceedings

[6] Section 112(2) of the CPA permits an accused who pleads guilty to submit a written statement setting out the facts admitted and upon which the plea is based. A conviction may follow only if the court is satisfied that the accused admits all the allegations in the charge to which the plea relates and which is necessary to establish the offence.

[7] In *Director of Public Prosecutions, Gauteng v Hamisi*,² the Supreme Court of Appeal explained that a court considering a statement under s 112(2) must determine whether it admits every element of the offence. If it does not, the court must question the accused to clarify the matter. The written statement constitutes the factual matrix upon which the accused is convicted and sentenced.

[8] It follows then that the presiding officer must examine the statement carefully and satisfy herself that it contains an unequivocal admission of every essential element of the offence. The enquiry required by s 112(2) is therefore not a mechanical one. Neither the prosecutor's acceptance of the statement nor the fact that the accused was legally represented relieves the court of that duty. If the statement contains an ambiguity, qualification or inconsistency casting doubt upon the accused's legal guilt, the court must clarify it or act in terms of s 113 of the CPA.

¹ *S v Muridzo; S v Ramafikeng* (325/2022; 324/2022) [2023] ZAWCHC 32 (20 February 2023) at para 1 and 18 to 19

² *Director of Public Prosecutions, Gauteng v Hamisi* 2018 (2) SACR 230 (SCA) at para 8. See also *S v Mshengu* 2009 (2) SACR 316 (SCA) at para 7 for the principle that legal conclusions are insufficient: the statement must disclose the facts establishing the offence.

[9] Paragraph 3 of the plea statement recorded that the property concerned was “the property or in the lawful possession of W..... J.....”. That was the name of the accused. The charge sheet, however, identified Beryl Windvogel as the complainant.

[10] This was not an immaterial typographical error which could safely be disregarded. On its face, the statement conveyed that the property belonged to, or was lawfully possessed by, the accused himself. It therefore failed to establish clearly that the property belonged to or was lawfully possessed by another person. Depending on the offence charged, this bore directly upon the elements of unlawfulness, ownership or possession and the absence of consent.

[11] The uncertainty was compounded by the inconsistent references to the complainant as male, notwithstanding the different name reflected in the charge sheet. The record consequently left unresolved whether the accused, the prosecutor and the court were referring to the same complainant and the same property.

[12] These discrepancies required clarification before the plea could be accepted. The court could have questioned the accused to remove any genuine ambiguity or, if doubt remained as to his guilt, directed that a plea of not guilty be entered under s 113 of the CPA. It did neither.

[13] The prosecutor’s acceptance of the statement could not cure the defect. Nor can the magistrate’s subsequent explanation that the reference to the accused was probably a typing error. A review court cannot speculate about what the accused intended to admit. The necessary admissions must appear from the plea statement and the proceedings at the time the conviction is entered.

[14] It follows that the court could not properly have been satisfied that the accused admitted every essential element of the offence. The conviction was therefore not in accordance with justice.

The sentencing proceedings

[15] The accused was 16 years old when he was sentenced. Section 28(2) of the Constitution requires that a child's best interests be of paramount importance in every matter concerning the child. Section 68 of the CJA correspondingly requires a child justice court, after convicting a child, to impose sentence in accordance with Chapter 10 of the Act.

[16] Section 69 requires an individualised sentence which balances the circumstances of the child, the nature of the offence and the interests of society. The sentence must promote the child's reintegration into the family and community and, where appropriate, secure the supervision, guidance, treatment and services required by the child. The child justice court must adopt an approach consistent with the objects and sentencing options expressly provided for in the CJA.

[17] In *S v Snyders and Others*,³[3] this Division emphasised that Chapter 10 gives effect, form and content to the constitutional rights of children in conflict with the law. In *S v L J*,⁴[4] the Court reaffirmed that the sentencing stage of child-justice proceedings is governed by Chapter 10 and that a child justice court must select an appropriate sentence from the sentencing options specifically provided for in the CJA.

[18] In *J A v S*⁵, the Court held that the CJA requires child offenders to be treated differently from adults and that a material departure from its procedural and substantive provisions may render the proceedings not in accordance with justice. The Court observed that, where the record does not demonstrate adherence to the CJA, the child may have been treated as though he or she were an adult.

[19] In *S v Dhliwayo*⁶, this Division held that sentencing a person as an adult for conduct committed while that person was a child placed the offender on the wrong side of the beneficial distinction between adults and children created by s

³ *S v Snyders and Others* 2012 (2) SACR 160 (WCC) at para 25.

⁴ *S v L J* 2023 (1) SACR 396 (WCC) at para 13 to 14 and para 52 to 53.

⁵ [2019] ZAECHC 64

⁶ (207/2024; A113/2024) [2025] ZAWCHC 139 (25 March 2025) at para 37 to 38 referring with approval to paragraphs [10] and [11] of *SN and Another*, [2015] ZAWCHC 5

28 of the Constitution. The Court described such an approach as a “constitutional failure” in the sentencing process.

[20] More recently, in *L N v S*,⁷[5] this Division reiterated the distinct statutory framework within which the sentencing of a child must occur. A child’s age is not merely another mitigating factor to be weighed in the ordinary sentencing enquiry applicable to an adult. The accused’s status as a child determines the legal framework, objectives and sentencing options which govern the imposition of sentence.

[21] It follows that a child is not properly sentenced under the CJA merely because the punishment ultimately imposed is non-custodial or may, in general terms, be regarded as lenient. The sentencing court must expressly recognise that it is dealing with a child and must determine sentence within the child-centred, individualised and restorative framework prescribed by Chapter 10.

[22] Where the record does not demonstrate that the court appreciated that it was sitting as a child justice court and applied the objects, principles and sentencing options prescribed by the CJA, the proceedings may convey that the offender was treated and sentenced as an adult. That concern arises in the present matter.

[23] The record does not demonstrate a structured application of the sentencing provisions of the CJA. There is no indication that the sentence was one imposed under the CJA. Nor does the record disclose a structured consideration of the sentencing options in Chapter 10. In particular, the legal basis upon which the matter was postponed for monitoring, the precise relationship between the sentence imposed and ss 78 of the CJA and 297 of the CPA, and the consequences of compliance or non-compliance were not stated with the clarity required of a sentencing order affecting a child. Although the magistrate states in her response that she had ss 69 and 78 in mind, the statutory basis of the sentence was not identified and its terms were not expressly linked to the sentencing framework established by the CJA.

⁷ *L N v S (Appeal)* (A07/25) [2026] ZAWCHC 7 (19 January 2026).

[24] It follows that a child is not properly sentenced under the CJA merely because the punishment ultimately imposed is non-custodial or may, in general terms, be regarded as lenient. The sentencing court must expressly recognise that it is dealing with a child and must determine sentence within the child-centred, individualised and restorative framework prescribed by Chapter 10. The distinction lies not only in the severity of the punishment but also in the legal framework, principles and objectives governing its imposition. The court was required expressly to recognise the accused's status as a child and to sentence him in accordance with the child-centred and restorative framework prescribed by Chapter 10 of the CJA.

[25] Section 78 permits the postponement or suspension of sentence in accordance with s 297 of the CPA, subject to conditions appropriate to the child. Where that mechanism is employed, the order must identify its statutory basis and state its terms and conditions with sufficient clarity. The child, the probation officer and any court subsequently required to determine compliance must be able to ascertain precisely what is required, for what period, and what consequences may follow from non-compliance.

[26] In the present matter, the legal basis upon which the proceedings were postponed for monitoring, the relationship between the sentence imposed and ss 78 of the CJA and 297 of the CPA, the precise conditions imposed, and the consequences of compliance or non-compliance were not stated with the required clarity. Viewed objectively, the record creates the impression that the accused was dealt with under the ordinary adult-sentencing framework rather than as a child under the CJA.

[27] A sentencing court need not recite every provision of the CJA as a matter of formula. The record must, however, demonstrate that the child's status was recognised and that sentence resulted from the application of the governing child-justice principles. The magistrate's subsequent explanation that she had the provisions of the CJA in mind is relevant but cannot supply an enquiry which is not apparent from the proceedings themselves.

[28] Judicial decisions must be supported by the record. An ex post facto explanation cannot repair material omissions or uncertainty in the sentencing

proceedings nor can it convert what appears to have been an adult sentencing process into one conducted under Chapter 10 of the CJA. The omission was material and rendered the sentencing proceedings irregular. In any event, once the conviction is set aside, the sentence founded upon it cannot stand.

Appropriate remedy

[29] The defects in the plea proceedings go to the foundation of the conviction. This is not a case in which the review court can correct a clerical mistake while preserving the proceedings. The accused was convicted without an unequivocal admission of all the essential elements of the offence.

[30] The appropriate remedy is to set aside both the conviction and sentence and remit the matter for proceedings de novo before another magistrate. The setting aside of the conviction does not amount to an acquittal on the merits and does not preclude the prosecution from proceeding afresh. Given the accused's age, any further proceedings must be conducted in accordance with the CJA and without avoidable delay.

[31] The magistrate's frank acknowledgment of the irregularities is appreciated. A heavy workload may explain how an oversight occurred, but it cannot validate a conviction where the statutory safeguards governing a plea of guilty—particularly that of a child—were not observed.

Order

[32] The following order is made:

1. The conviction and sentence are reviewed and set aside.
2. The matter is remitted to the magistrates' court for proceedings de novo before a magistrate other than the magistrate who presided over the original proceedings.

3. Any further proceedings must be conducted in accordance with the Child Justice Act 75 of 2008.
4. The accused's identity must continue to be protected in accordance with the applicable provisions governing the confidentiality of child justice proceedings.

M F ADAMS
Acting Judge of the High Court

I agree and it is so ordered

R Barendse
Judge of the High Court