



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

Reportable / Not Reportable

Review Case No: 173/2026

In the matter between:

THE STATE

and

ERNEST KLINK

Accused

Coram: WILLE, J *et* ADAMS AJ

Delivered on: 08 September 2026

Summary: Criminal procedure - Sentence - District court - Imposition on same count of 36 months' imprisonment, wholly suspended, together with 36 months' correctional supervision under s 276(1)(h) of CPA - Combined sentence competent - Correctional supervision distinct from imprisonment and combination expressly permitted by s 276(3)(a) - Magistrate accordingly not exceeding penal jurisdiction - *S v Jacobs* 1994 (1) SACR 326 (C) and *S v Esau* [2021] ZAWCHC 140 followed – Practical difficulties highlighted.

ORDER

[1] The following order is made:

1. The convictions on counts 1 and 2 are confirmed.
2. The sentence imposed on count 1 is confirmed.
3. The sentence of 36 months' imprisonment, wholly suspended for five years on the conditions imposed by the trial court, on count 2 is confirmed.
4. The additional sentence of 36 months' correctional supervision imposed on count 2 in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977, together with its conditions, is set aside.
5. The proceedings are not certified as having been in accordance with justice insofar as they relate to the correctional supervision component of the sentence on count 2.

JUDGMENT

ADAMS, AJ

Introduction

[1] This matter was placed before this Court on special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 ('the CPA'), following an inspection conducted at the Ladismith Magistrates' Court by the Judicial Quality Assurance Officer.

[2] During the inspection, the Judicial Quality Assurance Officer identified what was considered to be an irregularity in the sentence imposed by an acting magistrate. The head of office was requested to submit the matter for special review.

[3] The referral records that the presiding officer was an acting magistrate whose contract subsequently expired. It was therefore not possible to obtain supplementary reasons or a response from the presiding officer concerning the sentence.

[4] The accused, who was legally represented throughout the proceedings, was charged with two counts of assault with intent to do grievous bodily harm. He pleaded not guilty to both and after evidence was presented, he was convicted on both counts on 28 November 2023.

[5] According to the referral letter, the accused was sentenced on 19 February 2023. That date is plainly incorrect because it predates both the plea and the convictions. It appears from the chronology that the intended date is 19 February 2024. Nothing turns on this apparent clerical error for purposes of the present review.

[6] On count 1, the accused was sentenced as follows: Thirty-six months' imprisonment, wholly suspended for five years on condition that the accused is not convicted of assault with intent to do grievous bodily harm, committed during the period of suspension, for which he is sentenced to imprisonment without the option of a fine.

[7] On count 2, the accused was sentenced to an identical period of suspended imprisonment on the same condition. In addition, he was sentenced to 36 months' correctional supervision in terms of s 276(1)(h) of the CPA, subject to the conditions imposed by the magistrate. This review concerns only the sentence imposed on count 2, namely assault with intent to do grievous bodily harm.

[8] The head of office expressed the view that the acting magistrate had exceeded the penal jurisdiction of the district court in respect of count 2. The reasoning was that the imposition of 36 months' suspended imprisonment exhausted the district court's three-year penal jurisdiction under s 92(1)(a) of the Magistrates' Courts Act 32 of 1944 ('the Magistrates' Court Act') and that the magistrate was consequently not entitled to impose an additional 36 months' correctional supervision on the same count.

[9] The head of office accordingly requested that this Court retain the suspended imprisonment component of the sentence on count 2 and set aside only the 36 months' correctional supervision sentence, together with its conditions.

[10] The enquiry is accordingly whether a sentence combining the maximum term of suspended imprisonment with correctional supervision is competent and falls within the penal jurisdiction of a district court.

Special-review jurisdiction

[11] Section 304(4) of the CPA provides that, where it is brought to the attention of a provincial or local division having jurisdiction that criminal

proceedings in a lower court were not in accordance with justice, the court may exercise the powers conferred upon a reviewing court by s 303 and s 304.

[12] The fact that the matter came to light only during a subsequent quality-assurance inspection does not prevent this Court from exercising its special-review jurisdiction. Nor does the departure of the acting magistrate deprive this Court of that jurisdiction. The material issue is whether the proceedings, and particularly the sentence imposed, were in accordance with justice.

[13] The convictions have not been questioned in the referral. Nothing in the record suggests that they were irregular. The review is therefore confined to the sentences imposed on count 2.

The district court's penal jurisdiction

[14] Section 92(1)(a) of the Magistrates' Courts Act limits the ordinary penal jurisdiction of a district court to imprisonment for a period not exceeding three years.

[15] The offence of assault with intent to do grievous bodily harm is a common-law offence. No statutory provision enlarging the district court's ordinary penal jurisdiction applies in the present matter.

[16] A suspended sentence of imprisonment remains imprisonment. Suspension postpones its operation, subject to the offender's compliance with the attached conditions; it does not alter the nature of the punishment. The 36 months' imprisonment imposed on count 2 therefore represented the maximum term of imprisonment which the district court was ordinarily competent to impose on that count.

[17] That conclusion, however, does not necessarily determine whether the magistrate was precluded from imposing correctional supervision. Section 276(1) of the CPA identifies different forms of punishment which may be imposed following conviction. They include imprisonment under s 276(1)(b) and correctional supervision under s 276(1)(h).

The statutory scheme governing correctional supervision

[18] Section 276A(1)(b) provides that correctional supervision imposed under s 276(1)(h) must be for a fixed period not exceeding three years. The 36 months' correctional supervision imposed in this matter therefore reached, but did not exceed, the statutory maximum.

[19] Section 276A(1)(a) further requires that correctional supervision may be imposed only after the court has received a report from a probation officer or a correctional official and is satisfied, having regard to that report, that the accused is a suitable candidate for correctional supervision.

[20] Section 276(3)(a) is central to the present enquiry. It provides:

'Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court—from imposing imprisonment together with correctional supervision.'

[21] The wording of this provision is unambiguous. The subsection expressly contemplated and authorised the imposition of imprisonment together with correctional supervision. The introductory words, 'notwithstanding anything to the contrary in any law contained' make clear that the power applies despite

any other statutory provision which might otherwise be interpreted as prohibiting the combination.

[22] Correctional supervision constitutes real and substantial punishment. Its conditions may include house arrest, community service, compulsory participation in treatment programmes, restrictions on movement and supervision by correctional officials. It is nevertheless a form of punishment distinct from imprisonment.

[23] Correctional supervision is an independent sentencing option which permits an offender to remain in the community subject to restrictions and supervision administered by the Department of Correctional Services.

[24] The penal limitation in s 92(1)(a) of the Magistrates' Courts Act regulates the maximum period of imprisonment which a district court may impose. It does not convert correctional supervision into imprisonment or require the duration of correctional supervision to be added to the period of imprisonment for jurisdictional purposes.

The applicable authorities

[25] The precise relationship between a magistrate's penal jurisdiction, suspended imprisonment and correctional supervision was considered in *S v Jacobs*.¹ The Court held that a district magistrate sentencing an accused in the first instance may impose correctional supervision together with conditionally suspended imprisonment.

¹ 1994 (2) SACR 326 (C).

[26] The Court held that a magistrate sentencing an accused in the first instance may, by virtue of s 276(3)(a), impose correctional supervision together with imprisonment which is conditionally suspended. The magistrate may, in principle, impose the maximum three years' imprisonment permitted under s 92(1)(a), as well as the maximum three years' correctional supervision permitted under s 276A(1)(b).

[27] The reason is that the limitation in s 92(1)(a) applies to imprisonment. Correctional supervision is not imprisonment and is subject to its own statutory limit. It therefore does not fall to be added to the term of imprisonment for the purpose of determining whether the district court has exceeded its jurisdiction to impose imprisonment.

[28] *Jacobs* distinguished between the original imposition of such a combined sentence and the later reconsideration of correctional supervision under s 276A(4)(a). *Jacobs* identified a potential difficulty where the offender subsequently breaches the conditions of correctional supervision, and the magistrate is called upon to reconsider that component of the sentence under s 276A(4)(a).

[29] If an offender breaches the conditions of correctional supervision, the magistrate may upon reconsideration under 276A(4)(a), replace the failed correctional supervision sentence with another appropriate punishment. Where imprisonment is imposed in substitution, it must be considered together with any suspended imprisonment which remains operative. The cumulative term of imprisonment may not exceed the district magistrate's penal jurisdiction.

[30] Thus, where three years' imprisonment has already been imposed and remains suspended, the district magistrate will have no jurisdictional room to replace the correctional-supervision component with further imprisonment. This is a consequence of the legislation's structure, but it does not render the original combination of imprisonment and correctional supervision incompetent.

[31] The reasoning in *Jacobs* was expressly followed by this Division in *S v Esau*². In *Esau*, the accused had originally been sentenced to 36 months' correctional supervision and an additional 18 months' imprisonment wholly suspended for five years. Following a breach of the correctional-supervision conditions, the magistrate reconsidered that component under s 276A(4)(a) and replaced it with 18 months' direct imprisonment.

[32] The Court held that, when reconsidering correctional supervision under s 276A(4)(a), a magistrate may not impose a substitute punishment which, together with any punishment remaining in force, exceeds the court's penal jurisdiction. The Court held that, on reconsideration, the magistrate was required to consider the substituted term of imprisonment together with the suspended imprisonment which remained in force. The two periods cumulatively amounted to 36 months and therefore fell within the district court's penal jurisdiction, although the Court ultimately found the cumulative sentence disproportionately severe on the facts.

[33] The Court in *Esau* affirmed the distinction drawn in *Jacobs*. It held that, when sentencing an accused *ab initio*, a magistrate may impose the maximum term of three years' imprisonment together with the maximum term of three years' correctional supervision.

² [2021] ZAWCHC 140.

[34] Correctional supervision is not imprisonment, and the magistrate's authority to impose it is separately regulated by s 276A(1)(b). The following statement in para 13 of *Esau* is of particular relevance:

'In Jacobs ... the court observed that if a magistrate wishes, when sentencing an accused person ab initio, to impose correctional supervision together with imprisonment which is conditionally suspended, which is permissible in terms of s 276(3)(a), he may impose both the maximum of three years' imprisonment as well as the maximum of three years' correctional supervision, since correctional supervision is not imprisonment and there is no limitation on a magistrate's jurisdiction to impose correctional supervision up to the limit of three years laid down in section 276A(1)(b).'

[35] *Esau* also recognised the potential anomaly created by such a sentence. If the maximum three years' imprisonment has already been imposed and remains suspended, the magistrate would have no jurisdictional room to replace failed correctional supervision with additional imprisonment. That possible future difficulty does not, however, invalidate the original sentence. The Court observed that this potential anomaly might require legislative intervention. That anomaly does not justify interpreting s 92(1)(a) as prohibiting a combination which s 276(3)(a) expressly permits.

The Supreme Court of Appeal authorities

[36] The Supreme Court of Appeal(SCA) has not, as far as this Court has been able to ascertain, considered the specific jurisdictional question decided in *Jacobs* and applied in *Esau*. It has, however, considered the scope and effect of s 276(3) on several occasions and has repeatedly recognised the operation of s 276(3).

[37] In *S v Van Dyk*³, the SCA considered the circumstances in which correctional supervision may be imposed. In doing so, it referred to the express terms of s 276(3), including the power conferred by s 276(3)(a) to impose imprisonment together with correctional supervision. *Van Dyk* confirms that correctional supervision is not confined to offences whose statutory penalty provisions expressly mention it. The judgment confirms that s 276(3) makes correctional supervision an independent sentencing option with broad application, subject to the qualifications imposed by the CPA and the Criminal Law Amendment Act 105 of 1997.

[38] More recently, in *Lorenzi v S*⁴, the Supreme Court of Appeal again considered the sentencing options contained in s 276 of the CPA. Although the Court did not expressly consider s 276(3), it did not suggest that a sentence combining imprisonment and correctional supervision was incompetent. The court approached the matter on the basis that the available sentencing options had properly been considered.

[39] Neither *Van Dyk* nor *Lorenzi* concerned the precise question whether the combined punishment exceeds the ordinary penal jurisdiction of a district magistrate. Neither *Van Dyk* nor *Lorenzi* held that correctional supervision must be treated as imprisonment when determining a district court's penal jurisdiction. Their treatment of s 276(3) is consistent with the distinction drawn in *Jacobs* and subsequently affirmed in *Esau*. They nevertheless confirm the statutory point upon which the reasoning in *Jacobs* and *Esau* rests: the CPA expressly permits imprisonment and correctional supervision to be imposed together.

³ 2005 (1) SACR 35 (SCA) para 11.

⁴ [2025] ZASCA 58.

[40] There is accordingly no later appellate authority which overrules or casts doubt upon the relevant principle established in *Jacobs*. On the contrary, their interpretation of s 276(3) is consistent with the conclusion that imprisonment and correctional supervision are separate sentencing options which may lawfully be combined.

Application to the present matter

[41] The sentence under consideration was imposed when the accused was sentenced initially. This is not a case in which the magistrate reconsidered failed correctional supervision under s 276A(4)(a) and substituted an additional term of imprisonment.

[42] The 36 months' suspended imprisonment imposed on count 2 exhausted the magistrate's jurisdiction to impose imprisonment on that count. It did not exhaust the court's jurisdiction to impose a legally distinct form of punishment expressly authorised by the CPA. Correctional supervision under s 276(1)(h) is not imprisonment. Its combination with imprisonment is expressly authorised by s 276(3)(a). The 36-month period of correctional supervision did not exceed the statutory maximum prescribed in s 276A(1)(b).

[43] It follows that the acting magistrate did not exceed the penal jurisdiction of the district court merely by imposing 36 months' correctional supervision in addition to 36 months' suspended imprisonment.

[44] The concern expressed by the head of office is understandable. If the accused breaches the conditions of correctional supervision, the three-year suspended sentence may restrict the magistrate's ability to replace the correctional-supervision component with imprisonment. That difficulty will

have to be addressed if and when the sentence is reconsidered under s 276A(4)(a).

[45] It does not follow that the suspended-imprisonment component should now be set aside. To do so on jurisdictional grounds would be inconsistent with the express terms of s 276(3)(a) and the decisions in *Jacobs* and *Esau*.

[46] The sentence must nevertheless be considered as a whole. The fact that its two components are legally competent does not relieve the sentencing court of its obligation to ensure that their cumulative punitive effect is proportionate to the offences, the offender, and the interests of society. The statutory power to combine them does not authorise disproportionate punishment.

[47] In *S v R*⁵ and *S v Ingram*⁶, correctional supervision was recognised as a flexible but substantive form of punishment. Its practical severity depends upon the conditions imposed. Those conditions must therefore be considered together with the suspended imprisonment, when assessing the overall proportionality of the sentence.

[48] A material difficulty appears from the record. Although correctional supervision was imposed on count 2, the magistrate did not explain to the accused the conditions attaching to that sentence, their practical effect, or the consequences of non-compliance. Nothing in the record establishes that the accused was otherwise informed of, understood, accepted, or undertook to comply with those conditions. The fact that the

⁵ 1993 (1) SA 476 (A).

⁶ 1995 (1) SACR 1 (A).

accused was legally represented does not permit this Court to presume that these requirements were met.

[49] This omission is material. Correctional supervision is not a nominal addition to the wholly suspended sentence. It is a distinct and substantive punishment, potentially involving restrictions on liberty, house detention, community service, compulsory programmes, monitoring, and other obligations. Its conditions define the content and severity of the sentence and may expose the accused to adverse consequences should he fail to comply with them.

[50] Section 51(2) of the Correctional Services Act 111 of 1998 provides that no order imposing community corrections may be made unless the person to be subjected thereto agrees that it should be made according to the stipulated conditions and undertakes to co-operate in meeting them. The record does not demonstrate compliance with that peremptory safeguard. Nor does it establish that the accused was given a meaningful opportunity to understand the conditions before being required to comply with them.

[51] In *S v J.M.J (Review)*⁷, the Court held that a sentence of correctional supervision lacking specificity as to its conditions was incompetent. It stressed that a court order must state the conditions to be administered by the Department of Correctional Services.

[52] An accused cannot be left unaware of what is required, when and where to report, what programmes or community service must be undertaken, or what consequences follow upon non-compliance. The same

⁷ [2024] ZANHC 124 para 15.

principle applies here. Even if conditions were formally recorded, their absence from the explanation to the accused leaves no basis to conclude that he understood and accepted them.

[53] The material misdirection therefore resulted in a failure of justice in relation to the correctional-supervision component. The fact that it was imposed in addition to a wholly suspended sentence does not cure the defect. On the contrary, the cumulative character of the sentence made it especially important for the magistrate to explain the independent obligations and punitive consequences flowing from correctional supervision.

[54] The ordinary remedy might be to remit the matter for the correctional-supervision sentence to be properly reconsidered. That course is not appropriate here. The acting magistrate is no longer available to explain the basis upon which the conditions were selected or to reconsider their suitability.

[55] Further, the three years' imprisonment, albeit wholly suspended, already exhausts the district court's ordinary jurisdiction to impose imprisonment on count 2. Although this did not render the original combination of suspended imprisonment and correctional supervision incompetent, it materially constrains the practical options should the correctional supervision sentence later fail and require reconsideration under s 276A(4).

[56] The core issue here is one of proportionality. On count 1, the accused received the maximum 36-month suspended sentence. On count 2, he received another 36-month suspended sentence, plus the maximum 36-month term of correctional supervision. Subjecting an offender to two

maximum jurisdictional sentences across counts arising from the same trial, thereby compounding the maximum non-custodial restraint with 72 months of suspended imprisonment, creates a crushing cumulative burden that is disproportionate for the convictions in a lower court.

[57] The combination of the sentences is technically incompetent *ab initio* because the practical effect of exhausting the three-year limit under section creates a jurisdictional stalemate. Further, if a condition of correctional supervision is breached, the statutory conversion mechanism is rendered nugatory. I say this because the magistrate has zero jurisdictional leeway to impose direct imprisonment without exceeding the district court's 36-month ceiling. Imposing a sentence that by design cripples the court's statutory enforcement power on breach constitutes a material sentencing misdirection.

[58] Further, if the offender commits a further assault during the 36-month correctional supervision period, that single act would simultaneously trigger:

- (i) an application for reconsideration/re-sentencing; and
- (ii) the putting into operation of the 36-month suspended sentence.

[59] This exposes the offender to multiple severe penal consequences for a single default.

[60] In these circumstances, a remittal would neither cure the absence of a record showing informed acceptance of the original conditions nor serve the interests of justice. The appropriate order is to set aside only the correctional supervision component. The wholly suspended sentence of 36 months' imprisonment on count 2 remains competent and unaffected.

[61] The proceedings were consequently not in accordance with justice in respect of the sentence of correctional supervision imposed on count 2.

Order

[62] The following order is proposed:

1. The convictions on counts 1 and 2 are confirmed.
2. The sentence imposed on count 1 is confirmed.
3. The sentence of 36 months' imprisonment, wholly suspended for five years on the conditions imposed by the trial court, on count 2 is confirmed.
4. The additional sentence of 36 months' correctional supervision imposed on count 2 in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977, together with its conditions, is set aside.
5. The proceedings are not certified as having been in accordance with justice insofar as they relate to the correctional supervision component of the sentence on count 2.

M F ADAMS

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered:

E.D. WILLE

JUDGE OF THE HIGH COURT