THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

[WESTERN CAPE DIVISION, CAPE TOWN]

High Court Reference Number: 412 / 2026

Case Number: A 794 /2023

In the matter between:

RONALD STRYDOM **APPLICANT**

and

THE STATE **RESPONDENT**

Coram: Wille et Holderness, JJ

Delivered: 6 November 2026

Summary:

This is a review proceeding and process in terms of section 304(4) read with the provisions of Chapter 30 of the Criminal Procedure Act 51 of 1977 ("the CPA"). Sentence substituted. The substituted sentence should not be understood as a finding that the accused necessarily deserved the maximum sentence merely because the original sentence exceeded the court's powers. The maximum term is justified because of the aggravating circumstances and the accused's personal circumstances, as established in the court record.

ORDER

1. The court a quo's sentence is reviewed and set aside.

2. In its place, the following sentence is substituted: "**three (3) years' imprisonment".**

3. The substituted sentence is subject to any applicable statutory provisions governing the manner in which the sentence is to be served and the credit, if any, to which the applicant is entitled for time already served.

4. The conviction remains undisturbed and is confirmed.

JUDGMENT

WILLE, J (Holderness J, concurring):

INTRODUCTION

[1] This matter comes before me by way of a special review from the lower court. For the purposes of clarity and ease of reference, the 'parties' to this review application shall be referred to as the applicant and the respondent, as cited above.[1]

[2] This is a review proceeding and process in terms of section 304(4) read with the provisions of Chapter 30 of the Criminal Procedure Act 51 of 1977 ("the CPA"). The issue requiring determination is whether the sentence imposed by the court a quo was competent in law and, if not, what order should be made in the circumstances.[2]

[1] The applicant is the accused and the offender.
[2] This involves a jurisdictional issue.

CONTEXT AND BACKGROUND

[3] On 22 August 2025, the applicant was convicted of housebreaking with intent to steal and theft. He was acquitted of robbery, and no finding was made on the charge of trespassing.[3]

[4] The applicant was thereafter sentenced to four years' direct imprisonment. Having considered the record of proceedings, particularly the sentencing judgment, I am satisfied that the sentence cannot stand if, as the record indicates, it was imposed by a district magistrate's court exercising its ordinary sentencing jurisdiction. I say this because the sentence exceeded the maximum period of imprisonment ordinarily permitted by law for such a court.[4]

[5] The charges arose from an incident on 22 November 2023 at the complainant's home in Pinkster Park, Somerset West. At the time, the complainant was a minor, aged 13 years, and was alone at home.[5]

[6] The complainant testified that the applicant forcibly opened his bedroom door, entered the room and took a mobile telephone from him. The applicant thereafter took him from room to room in the house and removed another mobile telephone. The complainant was subsequently left in his mother's bedroom.[6]

[7] The complainant identified the applicant as the perpetrator. His evidence was supported, in material respects, by the evidence of a police sergeant, who testified about the applicant's apprehension and the identification of a torch found in the applicant's possession. The complainant identified the torch by an inscription bearing his name.[7]

[8] The applicant denied committing the offences. At the conclusion of the trial, the court accepted the respondent's case to the extent reflected in the convictions.[8]

[9] The judgment on count 3 reflected on the record as '**no finding'** is meaningless. On this charge, for the avoidance of doubt, the applicant is found not guilty.[9]

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[3] The "no finding" judgment also raises a concern.
[4] Vide section 92(1)(a) of the Magistrates' Courts Act 32 of 1944.
[5] This is an aggravating factor.
[6] Undoubtedly this was a traumatic experience.
[7] This evidence remains undisputed.
[8] The conviction was in the interests of justice.
[9] The judgment of no finding can only mean a finding of not guilty.

THE SENTENCE IMPOSED

[10] During sentencing, the court considered the applicant's personal circumstances, the nature and seriousness of the offence, the interests of society, and the applicant's previous convictions.[10]

[11] The applicant was 34 years old. He was unmarried and had two children, with whom he had lived before his arrest, together with his girlfriend. He had a Grade 8 education and was not in fixed employment. The record reflects a lengthy history of previous convictions, including convictions for offences involving dishonesty. The applicant submitted that certain convictions dated from many years earlier and that the court should consider the applicant's personal circumstances, his time in custody and the need for a balanced sentence. The respondent, in turn, emphasised the seriousness of the offence, the vulnerability of the child who was alone in the house and the applicant's repeated involvement in criminal conduct.[11]

[12] In imposing sentence, the court expressed concerned about the applicant's persistent commission of offences involving dishonesty and the circumstances in which the offence had been committed. It ultimately sentenced him to four years' direct imprisonment.[12]

THE LEGAL PRINCIPLES

[13] The jurisdiction of a lower court to impose punishment is determined by statute. Section 92(1)(a) of the Magistrates' Courts Act 32 of 1944 provides, subject to any applicable statutory exception, that a court which is not a court of a regional division may impose imprisonment for a period not exceeding three years, whereas a regional court may ordinarily impose imprisonment for a period not exceeding 15 years. A district magistrate's court cannot increase its sentencing jurisdiction merely because the circumstances of an offence or an accused's previous convictions appear to warrant a more severe punishment.[13]

[14] Where the court considers that the magnitude of the offence merits punishment exceeding its jurisdiction, the appropriate statutory procedure must be followed. Section 116 of

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[10] Following the traditional sentencing principles.
[11] There were many aggravating circumstances.
[12] Beyond the jurisdictional powers of the judicial officer.
[13] S v Plaatjie [2005] ZANWHC 88 and section 92(1)(a) of the Act.

the CPA makes provision for the referral of an appropriate matter to a regional court in the circumstances contemplated by that section.[14]

[15] The imposition of a sentence exceeding the sentencing jurisdiction of the court is a material irregularity. The sentence is incompetent and cannot be permitted to stand.[15]

[16] Section 304(2)(c)(ii) of the CPA empowers a reviewing court, in the circumstances contemplated by that section, to confirm, reduce, alter or set aside a sentence or order of a magistrate's court. The reviewing court is therefore empowered to intervene where a sentence is not in accordance with justice, including where the sentence imposed exceeds the court's lawful jurisdiction.[16]

[17] The sentence must accordingly be set aside. The question that remains is what sentence should be substituted. In determining an appropriate substituted sentence, the seriousness of housebreaking with intent to steal and theft must be weighed against the personal circumstances of the accused and the legitimate interests of society. The sentence must reflect the need to deter similar offences, protect the community and give appropriate recognition to the rehabilitative purpose of punishment. At the same time, punishment must remain proportionate to the offence and the offender's circumstances.[17]

[18] Housebreaking with intent to steal and theft is a serious offence. It involves an unlawful invasion of another person's premises and an infringement of the victim's property rights. The prevalence of property-related offences and the legitimate expectation that the law will protect persons and their property are relevant considerations. These factors justify a sentence that contains a substantial element of deterrence. Those considerations do not, however, permit a sentencing court to disregard the limits of its jurisdiction.[18]

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[14] This is the procedure that should have been followed.
[15] This is common cause.
[16] This case involves a jurisdictional issue.
[17] There were aggravating circumstances in this case.
[18] The jurisdictional limit for imprisonment was three (3) years.

[19] Nor do they remove the obligation to consider the applicant's individual circumstances and prospects of rehabilitation. The sentence must be determined on the facts established in the record, rather than on general considerations of deterrence alone.[19]

[20] Having considered the nature of the offence, the sentencing objectives and the jurisdictional limit applicable to the court a quo, I am of the view that a sentence of three years' imprisonment is an appropriate substituted sentence. This sentence remains within the statutory ceiling and gives due weight to the seriousness of the offence without perpetuating the jurisdictional error. The substituted sentence should not be understood as a finding that the applicant necessarily deserved the maximum sentence merely because the original sentence exceeded the court's powers. The maximum term is justified because of the aggravating circumstances as established in the record.[20]

ORDER

In the result, I make the following order:

1. The court a quo's sentence is reviewed and set aside.

2. In its place, the following sentence is substituted: "t**hree (3) years' imprisonment".**

3. The substituted sentence is subject to any applicable statutory provisions governing the manner in which the sentence is to be served and the credit, if any, to which the applicant is entitled for time already served.

4. The conviction remains undisturbed and is confirmed.

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WILLE, J

I agree:

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HOLDERNESS, J

[19] The facts on the record are not to the benefit of the applicant.
[20] This offence was perpetrated against a minor.