

REPORTABLE

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IN THE SOUTH GAUTENG HIGH COURT JOHANNESBURG

HIGH COURT REF: 57/2013

DATE: 05/09/2013

In the matter between:

THE STATE

and

S I N

Accused

JUDGMENT

VICTOR, J:

[1] This matter concerns the diversion of children from the criminal justice system.

On 4 March 2013 the accused was convicted of theft of three Cadbury chocolate

bars from Pick n Pay with a total value of R59, 97.

[2] During mitigation of sentence it was ascertained that the accused was 16 years old. The magistrate set aside his conviction and noted a plea of not guilty. The matter came by way of review and Tshabalala J made the comment on 27 May 2013 that the magistrate should have first referred the matter for review after realising the error and before reversing the verdict.

[3] At the time of commencement of the trial in the court a quo there was an error in the child's age. This fact only became known after conviction stage.

[4] In terms of the Child Justice Act No 75 of 2008 (the act) the child must attend a preliminary enquiry to assess whether the child can be diverted from the criminal justice system. The magistrate directed that the child be sent to Protea Magistrate's court for this assessment.

[5] The appropriate procedure is for this court to set aside the conviction as the step by the court a quo to change the plea to not guilty was a nullity.

[6] All the proceedings before the court a quo are set aside.

M VICTOR

JUDGE OF THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

I agree:

NONYANE AJ

JUDGE OF THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG