REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A228/2016

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.

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DATE SIGNATURE

BRAND, GERALD C Appellant

And

THE STATE Respondent

JUDGMENT

THOMPSON AJ:

[1] The Appellant was convicted of one count of fraud in the sum of R24 020,00 in the district court. The conviction ensued from a plea of guilty tendered by the Appellant in terms of Section 112(2) of the Criminal Procedure

Act 51 of 1977 ("the Act"). After the plea of guilty was accepted and the Appellant being duly convicted, the State made application in terms of Section 114(1)(b) [1] of the Act to have the matter transferred to the Regional Court for sentencing purposes. In making the application, the State made the following submission:

> "*In terms of section 114(b) of* [the Act], *which states that if a Magistrate's Court, after a conviction, following on a plea of guilty, but before sentence, is of the opinion that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted, merits punishment in excess of the jurisdiction of a Magistrate's Court, the court shall stop the proceedings and commit the accused for sentence by the*

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[1] *"**114 Committal by magistrate's court of accused for sentence by regional court after plea of guilty***

(1) If a magistrate's court, after conviction following on a plea of guilty but before sentence, is of the opinion-

(a) . . .

(b) that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a magistrate's court; or

(c) that the accused is a person referred to in section 286A(1)",

the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction."

Regional Court having jurisdiction. We are certainly of the view that this section will apply. . .

So we would like to make that application and we hope that the court concurs with the view of the state that, in light of the previous convictions, this is certainly a case that needs to be referred to the Regional Court, because the state does not believe that three years imprisonment, which is its jurisdiction, is going to be suitable to this accused. . ."

[2] During the course of the aforesaid submission, the State made the following additional, and rather curious, submission:

"*. . .there is a very good chance that section 114(c) will also very soon be applicable to this accused, in that the accused may very soon be a person referred to in terms of Section 286A(1). . .*"

[3] Section 114(c) provides as follows a magistrate's court may commit an accused for sentencing by a regional court after a plea of guilty if it is of the opinion that the accused is a person referred to in section 286A(1)[2] of the Act.

[2] See fn 1

[4] Section 286A of the Act deals with declaring a convicted person as a dangerous criminal. None of the Appellant's prior convictions or the conviction *in casu* has any element of violence and the prosecutor's reference to Section 286A is an error. No doubt, to the trained legal eye, it is apparent that the prosecutor intended to refer to section 286 of the Act, the latter section dealing with declaring a repeat offender a habitual offender. Rather peculiarly, Mr Nukhere, who appeared for the Appellant in the district court, did not seek to correct this error on the part of the prosecutor.

[5] The learned magistrate in the district court also did not seek to correct this error in the part of the prosecutor. In transferring the matter from the District Court to the Regional Court, the Learned Magistrate in the district court recorded the following on the charge sheet annexures:

> *"Court is of the opinion in terms of Sec 114(1)(b) of Act 51/77 that the previous convictions of the Accused are such that the offence in respect of which the Accused has been convicted merits punishment in excess of the Magistrate's Court. The Court therefore stops the proceedings and commits the Accused for sentence in Regional Court 2."*

[6] This recordal was in line with the learned magistrate in the district court's order as recorded in the record where it was stated that:

> *". . .the court is of the opinion that in terms of section 114(1)(b) of* [the Act], *that the previous convictions of the accused are of such a nature that the offence in respect of which the accused has been convicted, merits punishment in excess of the Magistrate's Court. The court therefore stops the proceedings and commits the accused for sentence in Regional Court 2."*

[7] The record of the district court proceedings was duly proved and accepted in the regional court with the regional court confirming the conviction of the Appellant. The State proved a long list of previous convictions against the Appellant, which respectively includes 1, 6 and 21 counts of fraud as well as 71 counts of theft. It bears mentioning that the first two fraud offences were committed during 2004, some 4 months apart with the third fraud offence being committed during 2007. The 71 convictions of theft all arise from a single transaction committed during 2009. The Appellant was incarcerated on the latter offences until 3 September 2012 when he was released on parole supervision until 1 January 2016. The offence under consideration in this matter

occurred during April/May 2015, whilst the Appellant was still under parole supervision.

[8] In *S v Naweseb*[3] a comprehensive discourse of the origin of S286 of the Act was undertaken by Kritzinger AJ and in doing so the court held that the purpose of S286 of the Act was not so much to punish the accused for his most recent offence, but rather to see if, an accused who is removed from society for a long time, will outgrow his habitual criminal tendencies and further to protect the society against an accused who habitually commits offences. Both these objects are achieved by removing the accused from society for a lengthy period of time not exceeding 15 years.[4]

[9] No hard and fast rules exist in terms of which it is to be determined whether an accused has reached that stage where he habitually commits offences. Each case must be determined on its own merits. It would be risqué for a court to rely solely on the list of previous convictions in order to determine and find that an accused habitually commits offences. This is due to the fact that the reasons why accused persons commits offences differ on a case to case basis. Some accused persons commit offences out of pure desperation arising

[3] 1980 (1) 345 (SWA)
[4] *S v Niemand* 2001 (2) SACR 654 (CC); 2002 (1) SA 21 (CC)

out of social circumstances whilst others are seduced by adventure and the influence of friends.[5] The court is therefore enjoined to investigate the material facts upon which reliance is being placed for a declaration to be made in terms of section 286 of the Act. A duty rests on the State and the court to, at least, attempt to determine the circumstances under which the previous offences and the most recent offence had been committed.[6]

[10] This pre-constitutional practice that was laid down is salutary and finds even more application in a constitutional era where the accused's right to fair trial rights are enshrined.[7] The declaration of a person as a habitual offender is a drastic declaration and leads to exceptional punishment.[8] The declaration as a habitual offender has dire consequences for the liberty of an accused person, which could result in the accused being removed from society for up to 15 years. This punishment should, in my view, not be resorted to for flimsy reasons or based on speculative hypothesis.

[11] Section 286(1) of the Act enjoins the court to be satisfied that i. the accused habitually commits offences and ii. society should be protected against

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[5] Nothing in this judgment must be construed that the commission of offences due to social circumstances or the seeking of adventure is condonable from the perspective of the law or the courts. It is merely pointed out that the true nature and circumstances of the commission of repeated and eventually habitual offences should be known.

[6] *S v Nawaseb,* supra at 346F – 347A

[7] *S v Trichardt* 2014 (2) SACR 245 (GJ)

[8] *S v Van Eck* 2003 (2) SACR 563 (SCA) at para [10]

such accused person. In this matter the Appellant has previous fraud convictions emanating from 2004 and 2007. There is a space of some three years between these fraud convictions. There is a further space of 8 years between the last fraud conviction and the present fraud conviction, granted the Appellant spent just over 3 years thereof in prison on the theft convictions. The theft convictions, 71 in number, looks horrendous on paper, however a closer scrutiny of the SAP 69 shows that the 71 counts of theft arose from a single incident in 2009. Between 2012, when the Appellant was released under parole supervision and the commission of the offence in this matter, almost two and a half years had passed.

[12] The learned magistrate in the regional court found that the Appellant had been convicted of no less than 129 counts of offences relating to dishonesty. On my perusal of the SAP 69, I could only count 99. Of the 99 counts that I could determine, 71 counts thereof related to a single act, which in turn constituted 71 counts due to the legal definition of theft. Moreover, 21 counts of the 99 counts that I could determine, also arises from, so it seems, from a single act. This much seems to be confirmed by the fact that the court in that matter took the 21 counts together for the purposes of sentencing. The 6 counts of fraud of 2004 also seem to arise from one act. This much also seem to be confirmed by the fact that the court took the 6 counts together for the purposes of sentencing.

[13] The State did not seek an order in terms of section 286 of the Act to have the Appellant declared a habitual offender. If we are to accept that the reference to section 114(c) as read with section 286A of the Act by the prosecutor was a *bona fide* error on the part of the prosecutor and that a reference to section 286 of the Act was intended, it is evident that the State envisaged a situation whereby the Appellant would, in the future, find himself on the wrong side of section 286 of the Act.

[14] In light thereof that the material facts upon which the declaration of the Appellant as a habitual offender was not determined and the learned magistrate solely relied on the contents of the SAP 69 relating to the Appellant's previous convictions, I am of the view the learned regional court magistrate misdirected himself in declaring the Appellant a habitual offender. This misdirection is further supported by the fact that the learned magistrate relied on the number of previous convictions rather than evaluating the actual substance of the previous convictions. Had he done so he would have noted that the Appellant's previous criminal acts, although giving rise to numerous counts, are limited to 4 acts. Substantial time periods passed between each act. This shows the danger that Kritzinger AJ warned against in the *Nawaseb*-matter wherein he stated that

it would seldomly be possible to determine, premised solely on the list of previous convictions, whether an accused habitually commits offences.

[15] In order for the learned regional court magistrate to properly have exercised his judicial discretion in terms of section 286 of the Act, he had to be mindful of all relevant facts and principles.[9] It is obvious that not all relevant facts, as informed by the principles already dealt with, was considered by the learned regional court magistrate.[10] On this misdirection alone, we are entitled to interfere with the sentence imposed by the learned regional court magistrate.[11]

[16] In my view, this is not the end of the matter. It has become established practice that a prior warning at a previous hearing should be given to an accused before an accused is subsequently declared a habitual offender.[12] However, as the law presently stands, the prior warning at a previous hearing is not a *sine*

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[9] *National Coalition for Gay and Lesbian Equality & others v Minister of Home Affairs & others* 2000 (2) SA 1 (CC) para 11

[10] The issue of judicial discretion is further dealt with later on in this judgment.

[11] *S v Rabie* 1975 (4) SA 855 (A) at 857 D – F

"*1 In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal-*

(a) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court"; and

(b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been "judicially and properly exercised".

2 The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate."

[12] *S v Mache* 1980 (3) SA 224 (T). See also *R v Edwards* 1953 (3) SA 168 (A), *S v Erasmus* 1987 (4) SA 685 (CPA), *S v Van Eck* 2003 (2) SACR 563 (SCA), *Smith v S* (A02/2013) [2013] ZAFSHC 120; 2014 (2) SACR 190 (FB (27 June 2013)

quo non for declaring an accused a habitual offender.[13] The giving of a warning or the absence thereof is a factor that must be taken into consideration when the court exercises its sentencing discretion in declaring an accused a habitual offender. As a matter of fact, in the absence of a prior warning at a previous hearing, it has been held that exceptional circumstances must be present if the well-settled practice of a warning is to be deviated from.[14]

[17] That no prior warning was given to the Appellant is common cause. It is clear from the record that the learned magistrate did not consider the impact of the absence of such warning. Much less did the learning magistrate indicate to the Appellant that he is considering declaring the appellant a habitual offender and in failing to give such indication the learned magistrate failed to request submissions from the State and the Appellant regarding this intention.

[18] This failure, in itself, was a misdirection by the learned magistrate. Sentencing is a judicial function *sui generis* during which a more inquisitorial approach is required.[15] A criminal trial is not a game and the duty of a presiding officer is not merely that of an umpire to see that the rules of the game is observed. The presiding officer must not only direct and control the

[13] *S v Magqabi 2004 (2) SACR 551 (E)*
[14] *S v Smith* 2014 (2) SACR 190 (FB) at para [10]
[15] *S v Siebert* 1998 (1) SACR 554 (SCA) at 558J – 559A

proceedings according to the recognised rules of procedure but must also see thereto that justice is done.[16] This imposed, in my view, a duty on the learned magistrate to indicate that he considered declaring the appellant a habitual offender and calling for submissions thereon.

[19] My view that such a duty was imposed by general notions of justice, fairness and equity on the learned magistrate is fortified by the fact that the State did not seek a declaration in terms of section 286 of the Act. As a matter of fact, upon a reading of the record transmitted from the district court, it is evident that such declaration in terms of section 286 of the Act was not even contemplated by the State. The learned regional court magistrate did not take this fact into consideration.

[20] In the absence of a statutory requirement of a prior warning which must be issued at a previous hearing, however having regard to the established practice that such warning should preferably issued, the learned regional court magistrate was enjoined to consider what the effect of the absence of such prior warning at a previous hearing would have on the Appellant's constitutionally enshrined rights to a fair trial.

[16] *S v Rall* 1982 (1) SA 828 (A) at 831B – C

[21] In this matter no notice of appeal had been filed. The Appellant's handwritten application for leave to appeal proposes as grounds for the appeal against sentence that the sentence imposed is shockingly inappropriate in that he disregards the time period the Appellant spent trial awaiting. The Appellant also submits that the maximum period of 15 years' imprisonment as allowed for in terms of Section 286 of the Act constitute disproportionate and excessive punishment and constitutes cruel and unusual punishment and treatment. The Appellant further submits in his application for leave to appeal that correctional supervision or an alternative sentence to imprisonment should have been imposed. I take into cognisance that the Appellant, in drawing up the handwritten application for leave to appeal, acted in person. In drawing his application for leave to appeal, the appellant did not raise the lack of a prior warning at a previous hearing as an issue. No weight can be attributed to this failure as the Appellant acted in person.

[22] In the heads of argument submitted on behalf of the Appellant by Ms Simpson, it was submitted, for the first time, that the imposition of a habitual offender sentence in terms of section 286 of the Act is usually proceeded by a prior warning in previous proceedings that, should the Appellant again be convicted of similar offences, he runs the risk of being declared a habitual

offender.[17] It was argued that declaring an accused a habitual offender should not be made in the absence of a prior warning.

[23] Whether this prior warning in previous proceedings has become a constitutional jurisdictional element prior to imposing a sentence in subsequent proceedings in terms of section 286 of the Act has not been properly raised, either in the application for leave to appeal or the Appellant's heads of argument. The State, in seeking to have the appeal dismissed, submitted that the prior warning is not necessary,[18] but conceded that a more careful enquiry and investigation is then required for the sentencing court to exercise its discretion in whether or not to impose a section 286 of the Act sentence.[19] This latter concession, of course, ties in with the earlier finding of misdirection by the learned regional court magistrate by failing to consider all relevant facts and circumstances.

[24] In light of these conflicting submissions on behalf of the State and the Appellant, I am of the view that the question whether a prior warning at a previous hearing is a necessary precursor to declaring an accused a habitual

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[17] See fn 14
[18] *S v Waya* 1994 (2) SACR 334 (E); *S v Erasmus* 1987 (4) SA 4 SA 685 (C)
[19] *S v Waya*, *supra*

offender requires authoritative attention premised on constitutional considerations.

[25] The principle that where it is possible to decide any case without reaching a Constitutional issue, that course should be followed[20] is no longer part of our law.[21] Courts are therefore no longer called upon to avoid Constitutional issues whenever possible. Issues pertaining to the interpretation and application of legislation are ultimately constitutional and, this therefore affects how to approach the interpretation and application of legislation from the outset.[22] I therefor am of the view that this is an appropriate matter in which to deal with the question, informed by constitutional values and principles, whether a prior warning at a previous hearing is a necessary precursor to declaring an accused a habitual offender.

[26] As already indicated earlier in this judgment, there is no statutory requirement in Section 286 of the Act that a prior warning in previous proceedings must have been directed at an accused that he may be declared a habitual offender should he be again convicted of a similar offence. It is only a

[20] S v Mhlungu 1995 (3) SA 867 (CC) at para [59] as approved in Zantsi v Council of State, Sisky 1995 (4) SA 615 (CC) at para [3]
[21] Jordaan and Others v City of Tshwane Metropolitan Municipality and Others; City of Tshwane Metropolitan Municipality v New Ventures Consulting and Services (Pty) Ltd and Others; Ekhuruleni Metropolitan Municipality v Livanos and Others 2017 (S) SA 287 (CC)
[22] Jordaan v City of Tshwane Metropolitan Municipality, et al, supra at 80 para [8]

practice that has developed over the years that it has become customary to issue such prior warning at previous proceedings. Whether the absence of a prior warning during previous proceedings, in our constitutional era, precludes a subsequent Court from handing down a sentence in terms of Section 286 of the Act has not been authoritatively decided.

[27] The Constitutional Court[23] has indicated that a Court needs to be convinced, to make such declaration, that:

i. That the person habitually commits crimes;

ii. That its detention for at least 7 years is the right protection of the community against the Accused;

iii. That the Accused is not under the age of 18 years; and

iv. That the punishment does not warrant that the Accused be sentenced to a term imprisonment exceeding 15 years.

[28] Although the Constitutional Court did not indicate that a prior warning at a previous hearing is necessary, a careful reading of the *Niemand*-judgment shows that the grounds of appeal before the Constitutional Court was limited and the prior warning point was not even raised. I have not been directed to,

[23] *S v Niemand*, *supra*

nor have I found through my own research, any case law where this point has been considered within the context of our constitutional jurisprudence.

[29] What is clear from the various authorities is that declaring an accused as a habitual offender is a drastic sentencing option and, if imposed, leads to exceptional punishment. The pre-constitutional authorities already grasped this notion and established the salutary practice of requiring a prior warning at a previous hearing. If this was the position prior to our constitutional era, the practice should find even more application in the constitutional era having regard to an accused's entrenched constitutional right to a fair trial.

[30] An accused's substantive fair trial rights, which is broader than the rights specifically mentioned and conferred to an accused in section 35(3) of the Constitution,[24] demands that an accused be fully appraised of the charge or charges against such accused and the consequences if found guilty on such charge or charges.[25] To use the analogy of another drastic sentencing option,

[24] *S v Zuma* 1995 (2) SA 642 (CC) at para [16]

[25] *Mhlongo v S* (140/2016) [2016] ZASCA 152; 2016 (2) SACR 611 (SCA) (3 October 2016) at para [11] "*At the heart of the right to a fair criminal trial and what infuses its purpose, is for justice to be done and also be seen to be done. Dignity, freedom and equality are the foundational values of the Constitution. In relation to sentencing, what the right to a fair trial requires, amongst other things, is a procedure which does not prevent any factor which is relevant to the sentencing process and which could have a mitigating effect on the punishment to be imposed, from being considered by the sentencing court. The Constitutional Court emphasised '[i]n the present circumstances a fair trial would also have to ensure that, in the process of the sentencing court being put in possession of the factors relevant to sentencing, the accused is not compelled to suffer the infringement of any other element of the fair trial right.'*"

the minimum mandatory sentence provisions, the right to a fair trial requires that an accused be given sufficient notice of the State's intention to rely on the minimum mandatory sentencing regime in every instance.[26] In my view it follows that it has become a constitutional requirement that an accused be forewarned of the possibility of being declared a habitual offender before such a declaration may be made.

[31] Unlike minimum sentence provisions, where an accused is informed of the dire consequences upon being convicted in the charge sheet or indictment, it is not possible to do so where a habitual offender declaration may follow upon conviction. A reference to Section 286 of the Act in the charge sheet or indictment will immediately alert the presiding officer to, not only a previous conviction on a similar charge, but to a possible long list of previous convictions on a similar charge. This state of affairs is expressly prohibited by the Act.[27]

[32] Informing an accused, for the first time, after a conviction that the declaration as a habitual offender is being considered as a sentencing option in such proceedings stands, in my view, to prejudice the accused. An accused must be in a position to decide whether the accused wishes to be legally represented at the outset of a trial. This right to choose to be legally represented can only

[26] *Mohlongo* at para [15]
[27] See Section 89, 197, 211 and 271

be properly exercised if an accused is fully appraised of the consequences of a further conviction. If an accused chooses to be legally represented, the accused must be in a position to provide full instructions to the legal representative so that the accused may receive proper advice about all aspects of the case. This will allow an accused to make an informed decision regarding the conduct of the case.

[33] Although it was stated in the context of minimum mandatory sentencing that for the explanation of the consequences of applicable sentencing options to be effective, it must be done prior to the commencement of the trial, which means it must be made prior to an accused pleading to the charges,[28] is, in my view, also apposite to a possible declaration as a habitual offender. As the explanation cannot be done immediately prior to the trial commencing for the reasons already discussed herein, the only remaining juncture the warning can be given to an accused is at the time of the passing of sentence in the previous matter.

[34] This imposes a duty on the previous sentencing judicial officer to consider whether, on a subsequent occasion, a habitual offender declaration may be an appropriate sentencing option. If such judicial officer is of the view that such

[28] *Ramaite v S* (958/2013) [2014] ZASCA 144; 2015 (2) SACR 79 (SCA) (26 September 2014) at para [10]

declaration may ensue on a subsequent occasion, the accused must, at the very least be informed that a habitual offender declaration may ensue, the consequences of the declaration and the need for the accused to inform his legal representative at any possible subsequent proceedings of the fact that he had been so warned. I must mention, in passing, that it would be ill-advised for an accused to fail to inform his legal representative at subsequent proceedings that such a warning had been issued and then seek to rely on such failure on his part in an attempt to avoid being declared a habitual offender.

[35] The State, lastly, submitted that making a prior warning at a previous hearing a constitutional requirement and a mandatory precursor to declaring an accused a habitual offender will result in the fettering of a subsequent court's sentencing discretion. I do not agree. As was set out by Marais JA in *S v Malgas,*[29] there is a significant distinction between, on the one hand, depriving a court of any sentencing discretion at all and, on the other hand, one which fetters only partially the exercise of the discretion but leaves it otherwise largely intact. In my view the need for a prior warning at a previous hearing falls into the latter category.

[29] 2001 (2) SA 1222 (SCA) at para [2]

[36] Returning to the sentence imposed on the appellant it is clear that the learned regional court magistrate misdirected himself in declaring the appellant a habitual offender. However, the appellant's offences under consideration, coupled with his previous convictions on similar charges are sufficiently serious to warrant a period of substantial imprisonment.

[37] The appellant relies on a presentencing report by Ms Vergeer, a social worker who is also a probation officer as contemplated by Section 276A(1)(a) of the Act. Ms Vergeer's presentencing report, however, takes the matter no further and certainly does not assist the appellant in his quest for correctional supervision. Ms Vergeer expresses no opinion as to why correctional supervision should be considered above any other sentencing option or why the appellant is a suitable candidate for correctional supervision considered against any other sentencing option.

[38] One would expect an expert to express an opinion, within the scope of the expert's expertise, why correctional supervision will be the most beneficial sentencing option for an accused and to motivate such opinion. Instead Ms Vergeer's presentencing report does nothing more than summarise the various sentencing options available to the court together with setting out, in bullet points, the advantages and disadvantages of each sentencing option. This

approach is singularly unhelpful to the court and constitutes a shirking of an expert's duty to assist the court in understanding why one sentencing option should be preferred against another having regard to an accused's particular personal circumstances.

[39] In my view the sentence whereby the appellant was declared a habitual offender falls to be set aside and replaced with a period of direct imprisonment. Notwithstanding the unhelpful nature of Ms Vergeer's report, the appellant is not a suitable candidate for correctional supervision. He has had numerous opportunities to rehabilitate himself from his criminal ways and he has not taken advantage of any of the opportunities afforded to him. I cannot see how a non-incarceration sentence will serve as a deterrent or assist the appellant in rehabilitating himself.

[40] In the circumstances I propose the following order:

1. The appeal against the sentence imposed succeeds with the order declaring the appellant a habitual offender being set aside and replaced with 7 (SEVEN) years direct imprisonment;
2. The sentence imposed is ante-dated to [INSERT DATE OF ORIGINAL SENTENCE];

3. The appellant is hereby warned that he runs the risk of being declared a habitual offender in terms of Section 286 of the Criminal Procedure Act 51 of 1977 should be in the future be convicted of any offence of which dishonesty is an element. The appellant is further warned that an order whereby he is declared a habitual offender will result in him being imprisoned for a period of no less than 7 years, but no more than 15 years. The appellant is also warned that he should inform any future legal representative in respect of any future charges relating to crimes of dishonesty, prior to the commencement of such trial, of this warning being imposed on him.

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C E THOMPSON AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree, and it is so ordered.

M A MAKUME

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

COUNSEL FOR APPELLANT'S:	Adv S Simpson
APPELLANTS' ATTORNEYS:	Legal Aid
COUNSEL FOR RESPONDENTS:	Adv A M Williams
RESPONDENTS ATTORNEYS:	NPA
DATE OF HEARING:	23 August 2018
DATE OF JUDGMENT:	30 October 2018