

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

High Court Case No: 134/2013

Magistrate Case No: 1/14

Date: 14 August 2014

Not Reportable

Not of interest to other judges

Case No: A582/2014

In the matter between:

The State

and

P[...] B[...]

REVIEW JUDGMENT

Maumela J.

1. This matter came before me as a Special Review in terms of section 304A of the Criminal Procedure Act 1977: (Act No 51 Of 1977), “Criminal Procedure Act”. On the 16th of January 2014, before the magistrate’s court for the district of Wonderboom, sitting in Pretoria North, Gauteng, the accused was charged with the offence of Possession of Dagga, in contravention of section 4 (a); 4 (b), read with section 1,13,17 to 25, and 64 of the Drugs and Drug Trafficking Act 140 of 1992 Possession of Drugs.

2. The allegations are that upon or about the 4th of December 2013, at or near Soshanguve in the District of

Wonderboom, the accused did unlawfully and wrongfully have in his possession and or use, an undesirable dependence producing substance as listed in Part III of Schedule 2 of the said Act; to wit 15.4 grams of dagga.

3. Initially, on the charge sheet and relevant to this case, the age of the accused was indicated as 18 years. In court the Magistrate the accused stated that he understands the charge put to him. He pleaded guilty to it. The court asked the accused questions in terms of section 112 (1) (b) of the Criminal Procedure Act 1977: (Act No. 51 of 1977). The questions were asked in order to establish whether the accused admits all the elements of the offence.

4. At the time when the court was asking questions to the accused, it came to light that the accused was born on the [...] 1996. A copy of the accused's birth certificate was submitted to prove his age. Based on the date of birth of the accused as reflected on the copy of his birth certificate it turned out that the accused is 17 and not 18 years of age. That is contrary to what was reflected on the charge sheet.

5. Section 74 (1) of the “Criminal Procedure Act” provides that where an accused person is under the age of 18 (eighteen) years, a parent or the guardian of the accused shall be warned in accordance with the provisions of subsection 2, to attend the relevant criminal proceedings. Subsection 5 of this section provides that where no parent or guardian has been warned under subsection 2, the court before which the relevant proceedings are pending may at any time, during the proceedings, direct any person to warn the parent or guardian of the accused to attend such proceedings.

6. In this case, the presiding magistrate could not have been in a position to know that there is a need for a parent or a guardian to be in attendance in court during the proceedings. The reason for that is that on the charge sheet, the age of the accused is reflected as 18. If the accused was 18 years of age, it would not have been necessary for his parent or guardian to be in attendance at his trial.

7. To the extent that the presence of the accused’s parent or guardian is required at his trial, section 74 of the “Criminal Procedure Act” is couched in peremptory terms. As a consequence, the magistrates court Pretoria North in the case against the accused as recorded on the 15th January 2014 did not proceed in compliance with section 74 (1) and (s) of the “Criminal Procedure Act”.

8. In terms of section 74 of the “Criminal Procedure Act”, it is intended that the parent or guardian of an accused person be in a position to assist the minor in conducting his or her defence. The absence of a parent or guardian can therefore only prejudice an accused who is a minor if he or she has to conduct his or her defence without the assistance of that parent or guardian.

9. Section 35 (3) of the Constitution of South Africa guarantees a fair trial to all who are arrested, detained **and** accused. It cannot be fair that an accused person who qualifies to be accompanied by a guardian undergoes his or her trial without the assistance of such a guardian. The setting aside of the proceedings in this matter which happened before the magistrate is not contested. The magistrate himself submitted the matter to be specially reviewed for that purpose.

10. In the result, the proceedings in this case, which happened before the magistrates court sitting in Pretoria North stand to be set aside and the following order is made.

ORDER.

1. The proceedings in case number C 861/2013 Magistrate Wonderboom magistrate, sitting in Pretoria North, are set aside.
2. The case is ordered to be referred back to the magistrates court for the district of Wonderboom, sitting in Pretoria North, to be heard *de novo* before a different magistrate.

Maumela J.

Judge of the High Court of South Africa.

I agree.

Raulinga J.

Judge of the High Court of South Africa.