JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A458/2008

DATE: 27 FEBRUARY 2009

In the matter between:

W F APPLICANT

and

THE STATE RESPONDENT

ALLIE, J:

The appellant is a 15 year old youth who was charged at the 15 Mossel Bay Regional Court on 26 October 2006 with murder. He pleaded guilty and was accordingly convicted. He was sentenced to 15 years direct imprisonment. He now appeals against the sentence imposed. The appellant admitted that he stabbed the deceased, a 62 year old woman three times in the back with a knife.

The prescribed minimum sentence does not apply, because the appellant was 15 years old at the time when the offence was committed. In his plea explanation the appellant submitted that he had an argument with someone else and decided to vent his anger on the deceased. The appellant progressed to Standard 5 at school. He is a first offender. In the presentence report the probation officer mentioned that the appellant was suspended from school because of violent behaviour previously.

As counsel submitted in her heads that section 28 of the constitution applies, this Court is of the view that "detained", however, means incarceration other than after conviction as is evident in the use of the word detained in section 12 of the constitution, that is, "detained without trial". Clearly a criminal conviction is not a matter concerning the child only as contemplated by section 28(2) of the constitution. This Court just wants to draw counsel's attention to this fact.

Inasmuch as the offence was a brutal one that deprived the deceased of her life and deprived her family of her continued existence without any provocation by the deceased, it is clear that a sentence has to be imposed which takes account of the consequences of the offence upon the deceased and her family. However, the Court has to tamper its sentence by taking account of the personal circumstances of the accused, and in this matter the appellant was clearly a youthful offender from a very troubled and disturbingly unstable domestic background.

So in the circumstances of this case, this Court is of the view that the court a *quo* should have had regard to the approach adopted by the Supreme Court of the Appeal in the case of DPP KwaZulu Natal v P 2006(1) SACR 243 (SCA), where the Supreme Court of Appeal clearly took account of the youthful nature of an accused person who also committed the heinous crime of murder, obviously under somewhat different circumstances, but nevertheless the Supreme Court of Appeal then went on to deal with the possibility of rehabilitating the accused person in that case by imposing, in addition to a sentence of direct imprisonment, all of which was suspended, a further sentence of correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act. In that particular case the Supreme Court of Appeal went on to provide specifically for certain rehabilitation programmes which the accused person in that case, had to be subjected to.

In the circumstances of this case, as this Court does not have 20 the benefit of knowing exactly which rehabilitation programmes are available to the appellant, the Court is of the view that the sentence imposed by the court a *quo* should be set aside and that the case should be remitted

back to the court a *quo* for it to sentence anew, taking into account the need to impose in addition to direct imprisonment, a sentence which provides
specifically for correctional supervision and/or enrolment in some sort of rehabilitation programme.

So in the circumstances the order really is that the sentence imposed by the court *a quo* is set aside and the case is remitted back to the court *a quo* to sentence afresh.

ALLIE, J

I agree

MAGUBELA, AJ