



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE, CAPE TOWN)

REVIEW CASE NO. 311/2010
MAGISTRATE'S SERIAL NO. 19/2010
HIGH COURT REF. NO. 101499

In the matter between:

THE STATE

And

JOHN PIERRE RUITER

ACCUSED

REVIEW JUDGMENT DELIVERED ON TUESDAY, 14 JUNE 2011

DLODLO, J

[1] This matter served before me as a review emanating from the remarks made by the Presiding Magistrate. The remarks read as follows:

"Voorlegging op automatiese hersiening ingevolge Artikel 85 (1) Wet 75/2008

Na mening is die bepalings van artikel 85 oop vir verskillende interpretasies. Met die aanvanklike bestudering van die wetgewing was ek van mening dat dit nie nodig is om die saak op hersiening te stuur nie, aangesien die beskuldigde deurentyd regsverteenvoerdig was.

By bestudering van artikel 85 het ek my ook laat lei deur die bepalings van Hoofstuk 30 van die Strafproseswet, spesifiek artikels 302 (1) en 302 (3), wat aandui dat hersiening nie van toepassing is

op sake wat regsverteenvoerdig is nie. Artikel 85 bepaal juis dat Hoofstuk 30 van die Strafproseswet toepassing vind. Na mening is artikel 85 slegs 'n uitbreiding van Hoofstuk 30.

By nadere bestudering van artikel 85 blyk dit dat die volgende interpretasies ook moontlik is:

Artikel 85 (1) a – indien 'n kind tydens die pleging van 'n misdryf onder 16 jaar oud is, die vonnis onderhewig is aan hersiening – dit sou na mening beteken dat dit alle vonnisse insluit. Dit is nie duidelik of Artikel 85 (1) a ook betrekking het op gevalle van gevangenisstraf en verpligte verblyf soos in Artikel 85 (1) b nie.

Artikel 85 (1) B – maak voorsiening vir gevalle waar 'n kind 16 jaar of ouer is maar onder 18 jaar en gevonniss word tot tronkstraf wat nie in geheel opgeskort word nie of direkte verblyf in 'n kinder/jeugsorgsentrum, onderhewig is aan hersiening. Dan kan seker geredeneer word dat die verwysing na Hoofstuk 30 van die Strafproseswet eerder slaan op die prosedure van hersiening daarom ook die verwysing na Artikel 304 van die Strafproseswet spesifiek en dat hierdie gevalle onderhewig is aan hersiening ongeag of die beskuldigde regsverteenvoerdig is al dan nie. Juis die opskrif van die artikel, "outomatiese hersiening in sekere sake" maak die uitleg van artikel 85 meer ingewikkeld."

- [2] I agree with the Magistrate whose opinion is expressed above. The relevant section of the Children's Act could have been clearer. It is so that the field of application of automatic review is considerably limited by the provisions that cases where the accused person


enjoyed legal representation and those that are on appeal either against conviction or sentence are not subject to review. The instant matter, however, concerned a minor. Section 85 (1) of the Child Justice Act 75 of 2008 provides as follows:

"85.(1) The provisions of Chapter 30 of the Criminal Procedure Act dealing with the review of criminal proceedings in the lower courts apply in respect of all children convicted in terms of this Act: Provided that if a child was, at the time of the commission of the alleged offence-

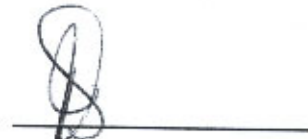
- (a) under the age of 16 years; or*
- (b) 16 years or older but under the age of 18 years, and has been sentenced to any form of imprisonment that was not wholly suspended, or any sentence of compulsory residence in a child and youth care centre providing a programme provided for in section 191 (2)(j) of the Children's Act, the sentence is subject to review in terms of section 304 of the Criminal Procedure Act by a judge of the High Court having jurisdiction, irrespective of the duration of the sentence."*

[3] The High Court is the upper guardian of all minors within its jurisdictional area. For that reason and that one alone I am of the view that cases provided for or referred to in section 85 of the Act under consideration should always be the subject of automatic review in the ordinary cause regardless of whether or not the said minor child was legally represented at trial. The instant matter is therefore

hereby reviewed and the proceedings are found to be in accordance
with justice.

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DLODLO, J

A handwritten signature in dark ink, appearing to be 'SAMELA, J', written over a horizontal line.

SAMELA, J