



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)  
(Coram: Binns-Ward, J *et* Henney, J)**

High Court Ref No: 269/20

Magistrate's Serial No: 06/2020

Case No: 1059/2019

In the matter between:

**THE STATE**

vs

**CHRISTIAAN JOSEPHS**

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**JUDGMENT: 19 AUGUST 2020**

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**HENNEY, J:**

[1] This matter was sent on automatic review by the magistrate at Bredasdorp, purportedly in terms of the provisions of section 302(1) of the Criminal Procedure Act 51 of 1977 ("the CPA"). The accused, who was not legally represented, had been correctly convicted on two counts of contravening section 37 of the General Law Amendment Act 62 of 1955, and one count of housebreaking with the intent to steal and theft.

[2] All three charges were taken together for sentence, and a sentence of two years' correctional supervision was passed upon the accused in terms of section

276(1)(h) of the CPA, subject to the usual conditions, such as house detention, community service, and attendance at substance abuse, anger management, and life skills programmes.

[3] I queried why the magistrate had sent the matter on automatic review because it seemed to me that the sentence that had been imposed did not render the case subject to such review.

[4] The magistrate replied as follows: *"The accused being unrepresented were sentenced in terms of the provisions of Section 276(1)(h) of Act 51 of 1977 to a term of correctional supervision. Due to the term imposed exceeding the limit as set out in Section 302(1) of the CPA 51/1977 I was of the opinion that the case be sent on review. I was further reminded by the learned author of Hiemstra's Criminal Procedure at 30-17 that 'If the sentence exceeds the limit, it is reviewable.'"*

[5] The reply made it evident that the magistrate was not aware of the fact that the sentence of correctional supervision imposed in terms of section 276(1)(h) of the CPA is *not* subject to review in terms of section 302 of the CPA. In the circumstances I could have merely returned the matter with a note. On reflection, however, I decided that it might be helpful to clarify the position in a judgment that might be instructive and helpful to magistrates generally.

[6] The procedure of automatic review has been part of our legal system for over a hundred years. Whilst it is not clear how the procedure originated, it has been said that the first reference to it was in sections 47 and 48 of Act No. 20 of 1856 (Cape Colony), which provided that in any case in which a magistrate sentenced a person upon conviction to imprisonment for a period exceeding one month, or to a fine exceeding £5, or to receive lashes, he was required to send the record by the next available post to the registrar of the Supreme Court. The proceedings were then laid before a judge and, if he found them to be in accordance with real and substantial justice, he issued a certificate to that effect, thereby confirming the

proceedings.<sup>1</sup> A summary of the history of the various legislative provisions dealing with automatic reviews in South Africa prior to the enactment of section 302 of the CPA is also to be found in *S v Mafikokoane; S v Mokhuane* 1991 (1) SACR 597 (O), from page 599.

[7] Section 276(1)(h) of the CPA provides for correctional supervision as one of the punishments which a sentencing court can impose on a convicted person. The imposition of the punishment is permitted subject to the other provisions of the CPA and any other law, and of the common law. Sections 276 (1)(b), (c), (d), (e) and (j) by contrast are all custodial punishments. With the exception of s 276(1)(e), which relates to 'committal to any institution established by law', they all involve *imprisonment*.

[8] "*Correctional supervision*" is defined in section 1 of the CPA as "a community based sentence to which a person is subject in accordance with Chapter V and VI of the Correctional Service Act, 1998, and the regulations made under that Act ..." (own underlining). The term is defined in Correctional Services Act 111 of 1998 as meaning "*compulsory work for a community organisation or other compulsory work of value to the community, performed without payment*". A person sentenced to correctional supervision in terms of s 276(1)(h) is a person subject to "community corrections" within the meaning of that term in the Correctional Services Act; see section 51(1)(a) of the Act. The objectives of "community corrections" are set out in section 50 of the Correctional Services Act. Section 50(1)(a) of the Act provides: "*The objectives of community corrections are-(i) to afford sentenced offenders an opportunity to serve their sentences in a non-custodial manner*" (own underlining). The conditions of correctional supervision may include 'house detention' (section 52(1)(a)), which means that the sentenced person is restricted to his dwelling for a stipulated period on a daily basis (section 59), but that is not imprisonment or

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<sup>1</sup> SALJ Vol 79 (1962) at 267, where a memorandum submitted by two judges of the then Transvaal Provincial Division to De Wet JP is reproduced with the permission of the Judge President and authors under the title: "*On The System of Automatic Review and The Punishment of Crime.*"

detention in custody even if it has been acknowledged in some judgments as having a similar effect to incarceration.

[9] Section 302(1)(a) of the CPA provides:

*Any sentence imposed by a magistrate's court-*

(i) *which, in the case of imprisonment (including detention in a child and youth care centre providing a programme contemplated in section 191 (2)(j) of the Children's Act, 2005 (Act 38 of 2005)), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;*

(ii) *which, in the case of a fine, exceeds the amount 17 determined by the Minister from time to time by notice in the Gazette for the respective judicial officers referred to in subparagraph (i),*

*shall be subject in the ordinary course to review by a judge of the provincial or local division having jurisdiction.*

Subsection (3) makes the provisions of s 302(1) applicable only with reference to a sentence imposed on an accused person who was not assisted by a legal adviser.

[10] It is apparent from the statutory provisions to which I have referred that correctional supervision is not a sentence of imprisonment. It is a non-custodial sentence which is imposed upon an accused person under strict conditions, such as house arrest, community service, rehabilitation and compulsory attendance of programs in relation, inter alia, to combatting drug and alcohol abuse. In *S v R* 1993 (1) SACR 209 (A), Kriegler AJA held in relation to the provision of correctional supervision as a sentencing option that the legislature has clearly distinguished between two types of offenders, viz, those who ought to be removed from society by means of **imprisonment**, and those, although deserving of punishment, that

should not be so removed from society. See also *S v Grobler* 2015 (2) SACR 210 (SCA). This is clearly what the magistrate had in mind when he then imposed a sentence of correctional supervision when he said the following during the sentencing proceedings: *"Die beamptes is van mening dat u 'n kans moet gegun moet word; dat u liever u vonnis buite in die gemeenskap moet uitdien, as wat u in die tronk in is."*<sup>2</sup> He further stated: *"Die oorweging van korrektiewe toesig – baie keer dan is die idee, maar dit is nie so 'n ernstige straf nie. Maar om iemand te beperk tot sy huis en vir hom te sê jy mag net sekere plekke na toe gaan, sekere tye mag jy na toe gaan (sic), word geag dieselfde effek te hê as wat 'n person in die tronk is."*<sup>3</sup>

[11] The sentence imposed by the magistrate was therefore not one that was subject to review in terms of the provisions of section 302(1) of the CPA.

[12] The matter is therefore remitted back to the Magistrate's Court, Bredasdorp, for the attention of the magistrate, whereafter it is still to be dealt with by the clerk of the court for further filing thereof. The Registrar of this court is furthermore, directed to submit a copy of this judgment to the Chief Executive Officer of the South African Judicial Education Institute, for distribution thereof to magistrates.

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**R.C.A. HENNEY**

Judge of the High Court

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<sup>2</sup> Loosely translated: *"The officials are of the view that you should be given a chance, that you should rather serve a non-custodial sentence in the community than go to prison."*

<sup>3</sup> Again, loosely translated: *"The consideration of correctional supervision for many would not be such a serious punishment. But to restrict someone to his house and to order that he may only go to certain places at certain times, may have the same effect of a person being incarcerated."*

I agree.

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**A.G. BINNS-WARD**

Judge of the High Court<sup>4</sup>