S v J AND OTHERS 2000 (2) SACR 310 (C)

Citation	2000 (2) SACR 310 (C)
Court	Cape Provincial Division
Judge	Van Reenen J, Van Heerden J
Heard	June 13, 2000
Judgment	June 13, 2000
Annotations	None

Flynote : Sleutelwoorde

Juvenile offenders - Sentence - Pre-sentence report - Need for obtaining such report reiterated - Assessment record and a pre-sentence report prepared by probation or correctional officer are two different things - Insufficient in circumstances for magistrate to have relied on the former.

Headnote : Kopnota

In a review of a conviction and sentence of the three accused for housebreaking with the intent to steal and theft, the Court noted that the magistrate, in sentencing accused No 1, who was a juvenile, had relied on the contents of an assessment report and had not had available, for the purposes of sentencing, a pre-sentence report. The Court pointed out that an assessment record, which was compiled inter alia to establish the prospects of the child in question being diverted away from the criminal justice system, differed from a pre-sentence report. It was important for judicial officers to obtain a pre-sentence report for juvenile offenders and in the instant case the magistrate had failed to elicit sufficient information concerning the personal circumstances of accused No 1. The Court set aside the sentence and replaced it with one in terms of which passing of sentence was postponed for a period of three years in terms of s 297(1) of the Criminal Procedure Act 51 of 1977. **Case Information**

Review.

Judgment

Van Heerden J: This is an automatic review in terms of the provisions of s 302, read with s 304 of the Criminal Procedure Act 51 of 1977 ('the Act'). The three accused were charged in the magistrate's court for the district of Caledon with the crime of housebreaking with the intent to steal and theft. All three accused pleaded guilty and were correctly convicted by the magistrate. Accused 2 and accused 3 were each sentenced to two years' imprisonment, while accused 1 was sentenced to12 months' imprisonment, suspended for four years on condition that the accused was not convicted of housebreaking with the intent to commit a crime or theft committed during the period of suspension.

When this matter was placed before me on automatic review, I queried the sentence imposed on accused 1. The magistrate subsequently responded to such query, for which response I thank him. Accused 1 is only 16 years of age and a first offender. Prior to the commencement of the trial, the relevant sections of a document headed '*Arrest, Detention and Assessment Record of Young Person in Conflict with the Law'* were completed and signed by, respectively, the police official who ordered the detention of accused 1, the police official in charge of the police cells where accused 1 was detained immediately after his arrest, the investigating officer and a probation officer. The last-mentioned individual was responsible for completing that part of the document headed '*Developmental Assessment Format*'. From information provided to me, upon my request by the Social Services Branch of the Western Cape Provincial Administration, it appears that this document was completed under the auspices of '*Project GO'*, a project spearheaded by the Inter - Ministerial Committee on Young People at Risk ('IMC'), flowing from the recommendations made by such committee in its 1996 report headed *Interim Policy Recommendations for the Transformation of the Child and Youth Care System* (see further, in this regard, South African Law Commission *Discussion Paper on*

Juvenile Justice Discussion Paper 79, Project No 106 (1998) at paras 2.18-2.33). While the principles underlying *'Project GO'*, as contained in the above-mentioned *Interim Policy Recommendations* of the IMC are in line with the approach to the treatment of juvenile offenders set out in, *inter alia*, s 28(1)*(g)* of the South African Constitution Act 108 of 1996 and with the articles governing juvenile justice contained in the United Nations *Convention on the Rights of the Child* (1989) (ratified by South Africa on 16 June 1995), I regret to say that the content of the '*Arrest, Detention and Assessment Record* ' completed in respect of accused 1 in this case appears to be totally inadequate. A brief perusal of this record, particularly phase 2 thereof (ie the so-called '*Developmental Assessment Format*') leads one to the conclusion that the format and language used is unnecessarily complex and has certainly not been properly understood by the probation officer involved. To my mind, this highlights the importance of legislation clarifying the approach to the assessment of young people in conflict with the law, as also the proper training of probation officers in this regard.
Recommendations for such legislation have been made by the above-mentioned South African Law Commission Project Committee on Juvenile Justice (Project No 106) - see chap 8 of Discussion Paper 79 and chap 4 of the Draft Child Justice Bill annexed thereto. These recommendations of the Project Committee have been widely supported, and it seems likely that they will be repeated in the final report and the final draft of the Child Justice Bill which will probably be released later this year. From the abovementioned recommendations of both the IMC and the South African Law Commission Project Committee on Juvenile Justice, it appears that the purpose of an assessment report in respect of a juvenile offender is *inter alia*, to establish the prospects of the child in question being diverted away from and dealt with outside the criminal justice system (thereby avoiding a criminal conviction), and to assist the prosecutor and other relevant officials in determining whether or not to continue with the prosecution of the child. It is clear from these documents that an assessment record, on the one hand, and a pre-sentence report prepared by a probation officer and/or a correctional officer, on the other hand, are two completely different things and serve completely different purposes. Despite this important difference, the magistrate in the case currently under review does not appear to have obtained a pre-sentence report in respect of accused 1 prior to the imposition of sentence. Indeed, in imposing sentence, the magistrate appears to have taken into account the contents of the '*Arrest, Detention and Assessment Record'* obtained, in respect of accused 1, at the pre-trial stage. In my view, the *modus operandi* followed by the magistrate in this regard was incorrect and inappropriate.

I have dealt exhaustively with the importance of obtaining a pre-sentence report in the process of sentencing young offenders in a recent review judgment (*S v Madoda Kwalase* 2000 (2) SACR 135 (C)). I do not intend to repeat the discussion contained in that judgment. Suffice it to say that, in my view, the magistrate in the current case failed to use the mechanisms at his disposal to elicit sufficient information concerning the personal circumstances of accused 1 before the imposition of sentence, and also failed to give proper consideration to the determination of an appropriate form of punishment and the adaptation of that punishment to suit the needs of accused 1.

As pointed out cogently by Erasmus J in the recent case of *S v Z en Vier Ander Sake* 1999 (1) SACR 447 (E) at 438*j*-439*b*, it is always important to have regard to
'die belangrikheid van opvolgwerk by jeugdige oortreders. Die pleging van 'n misdryf deur 'n jeugdige is 'n duidelike teken dat daar fout is in sy karakter of dat daar iets in sy gesinsomstandighede skort. Dit is dus kennelik aangewese dat daar behoorlik ondersoek na hom en sy agtergrond gedoen word en dat sy verdere gedrag en sy gesinsomstandighede gemoniteer word. 'n Vonnis van 'n jeugdige wat effektiewelik eindig wanneer die veroordeelde by die hof uitstap, is selde gepas. Dus, wanneer die vonnis uitgestel of opgeskort word, is dit paslik dat die beskuldigde in die sorg of onder die toesig van 'n gepaste instansie of persoon

geplaas word.'

As indicated above, accused 1 is only 16 years of age and a first offender. It appears from the record that he lives with his mother and that he left school during 1997 (while he was in standard 4). There is also a strong possibility that, in committing this crime, accused 1 was influenced by the other two accused, both of whom were older than he and had previous criminal records. The sentence of suspended imprisonment imposed upon accused 1 will not fulfil the important purposes of monitoring and 'follow-up' in respect of youthful offenders stressed by Erasmus J in *S v Z en Vier Ander Sake* (*supra* at 438*j*-439*b*) and will also not do much (if anything) to 'promote the accused's re-integration and his assumption of a constructive role in society' (as required by article 40(1) of the *Convention of the Rights of the Child*). 2000 (2) SACR p313

In all the circumstances, I would confirm the conviction of accused No 1, but would set the sentence aside and replace it with the following sentence:

'In terms of s 297(1) of the Criminal Procedure Act 51 of 1977, the passing of sentence is postponed for a period of three years on condition that accused No 1 submits himself to the supervision of a probation officer as described in the Probation Services Act 116 of 1991 until he reaches the age of 19 years.'

Van Reenen J concurred.