Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**NO**
Of Interest to other Judges:	**NO**
Circulate to Magistrates:	**YES**

Case No: 2164/2022

In the matter between:

FREDERIK WILHELM KEYSER Applicant

and

THE DISTRICT COURT MAGISTRATE 1st Respondent

(KROONSTAD), Z. NOMZAZA N.O

DIRECTOR OF PUBLIC PROSECUTION, 2nd Respondent

HEARD ON: 30 JANUARY 2023

JUDGMENT BY: MHLAMBI, J

CORAM: MHLAMBI, J *et LOUBSER*, J

DELIVERED ON: 31 JANUARY 2023

REASONS

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[1] On 30 January 2023 I granted an order as follows:

"1. The conviction and sentences of the applicant under case A472/2018 in the magistrates' court for the district of Kroonstad are reviewed and set aside.

2. No order as to costs."

[2] I stated that the reasons for the granting of the order would follow.

[3] The applicant was convicted in the magistrate's court for the district of Kroonstad of the crime of assault with the intent to do grievous bodily harm. He was sentenced to six months' imprisonment which was wholly suspended for a period of three years on condition that he was not convicted of assault within the period of suspension. He approached this court with an application to review and set aside both the conviction and sentence.

[4] The first respondent filed a notice to abide by the decision of the court. The second respondent was joined as a respondent to the review application but chose not to oppose the application. The application is therefore unopposed.

[5] The main ground on which the review is based is that the district court did not have the requisite punitive jurisdiction to hear the matter as the prescribed minimum sentence exceeded the limits of the district court's punitive jurisdiction. The offence with which the applicant was charged attracted a minimum sentence in terms of section 51(2)(b) read with Schedule 2 Part III of the Criminal Law Amendment Act 105 of 1997.

[6] Section 51(2)(b) of the Act provides that:

*"**51 Discretionary minimum sentences for certain serious offences***

(1) …

(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in-

(a)….

(b) Part III of Schedule 2, in the case of-

(i) a first offender, to imprisonment for a period not less than 10 years;

(ii) a second offender of any such offence, to imprisonment for a period not less than 15 years; and

(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 20 years;"

[7] Part III of Schedule 2 provides that:

"Assault with intent to do grievous bodily harm on a child under the age of 16 years.
Assault with intent to do grievous bodily harm-
(a) on a child-
(i) under the age of 16 years; or
(ii) …"

[8] It is clear from the the evidence on record that the victim of the assault, K K, is the applicant's daughter who was nine years old at the time of the assault. The Minimum Sentences Legislation prescribes that only a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in section 51(2)(b) read with Part III of Schedule 2 of Act 105 of 1997. The district court did not have the punitive jurisdiction to adjudicate the matter. Consequently, the proceedings were reviewable in terms of section 22(1)(a) of Act 10 of 2013 and the conviction and sentence stood to be reviewed and set aside.

[9] These are the reasons.

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MHLAMBI, J

I concur

_____
LOUBSER, J

On behalf of the applicant: Adv. HJ van der Merwe.
Instructed by: Phatsoane Henney Inc.
36 Markgraaff Street
Westdene
Bloemfontein

On behalf of the respondents: No appearance.