Reportable:	**YES/**NO
Circulate to Judges:	YES/**NO**
Circulate to Magistrates:	**YES**/NO
Circulate to Regional Magistrates:	**YES**/NO

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION – MAHIKENG

HIGH COURT SERIAL NO: 11/2024

CASE NO.: RE655/2023

MAGISTRATE'S SERIAL NO.: 1/2024

In the review matter between:

THE STATE

and

REHOMODITSWE MOSITO **ACCUSED**

DATE RECEIVED: **11 MARCH 2024**

DATE OF JUDGMENT: **26 MARCH 2024**

ORDER

1. The sentence of three (3) years imprisonment imposed by **Magistrate Tsoku** imposed on 10 January 2024 is reviewed and set aside and replaced with the following sentence:

"1. The accused is sentenced to three years' imprisonment, half of which is suspended for three years on condition that the accused is not convicted of theft committed during the period of suspension and on condition that he reports to the Dr Fabian and Florence Rebeiro Treatment Centre for Drug and Substance Abuse in Cullinan Fabian within seven days of his release from the Correctional Centre for an assessment and that he thereafter submits himself for such further treatment as the professional officers of the hospital so direct and that he co-operates fully in the said treatment.

2. The officer commanding the Correctional Centre where the accused is detained is to ensure that the accused is subjected to a rehabilitation programme for drug addiction as part of the programmes he is required to complete during his incarceration, which should include a life skills programme. The accused must submit himself to such treatment and/or programmes as determined by the officer commanding the Correctional Centre and he must fully co-operate and participate in the programmes.

3. The officer commanding the Correctional Centre from which the accused is to be released, is authorised and directed to:

(i) make an appointment for the accused at Dr Fabian and Florence Rebeiro Treatment Centre for Drug and Substance Abuse in Cullinan so as to enable him to comply with the requirements of paragraph 1 above and advise the accused of the date, time and place where he must report;
(ii) furnish the accused upon his release from the Correctional Centre with a letter addressed to the official in charge at Dr Fabian and Florence Rebeiro Treatment Centre for Drug and Substance Abuse in Cullinan in which the terms of this sentence are set out and to which are attached a copy of the accused's criminal record; and a copy of the social work report which is part of the trial record in this case."

2. The Magistrate is to ensure that the accused is brought before the court as a matter of urgency for the correct application of the provisions of section 103(1) of the Firearms Control Act 60 of 2000.

REVIEW JUDGMENT

REDDY AJ

[1] Within the purview of the automatic review process as evinced in 303 of the Criminal Procedure Act 51 of 1977 ('the CPA'), I queried a sentence of three (3) years imprisonment imposed on the accused pursuant to a plea of guilty to a charge of theft, in the Ga-Rankuwa Magistrates Court by **Magistrate Tsoku**.

[2] The following can be extracted from the incomplete and uncertified record of proceedings. The accused was arrested on 28 February 2023. He made his first appearance on 01 March 2023. Several postponements followed, with the accused represented by Legal Aid South Africa (LASA) until 18 December 2023 when he terminated the mandate of LASA and elected to conduct his own defence.

[3] *Ex facie* the record, a background report was requested by the Public Prosecutor Ga-Rankuwa from the Dr Fabian and Florence Rebeiro Treatment Centre for Drug and Substance Abuse in Cullinan ('the Treatment Centre'), to shed light on the accused

personal circumstances and what influenced his unlawful conduct. To this end a report was received from the Treatment Centre dated 14 August 2023. The report recommended that the accused be referred to the Treatment Centre in terms of section 35 of the Prevention of and Treatment for Substance Abuse Act 70 of 2008. The admission of the accused to the designated centre was interrupted as the accused failed to consistently take his prescribed chronic medication, which presented a health risk to the accused.

[4] The accused was eventually admitted to the Treatment Centre on 16 October 2023, for the treatment of his heroine and crystal methamphetamine substance abuse disorder. During his admission when standard medical admission procedure was followed, the accused admitted that he sold his chronic medication and therefore had none. On physical examination of the accused he presented with a recent “mis-shot” injection swelling on his arm. The latter implied that the accused had injected himself incorrectly by missing a vein and injecting the flesh of his arm directly. The author of the report Mrs Naudé, confronted with these circumstances found that the motivation for the treatment of the accused was therefore questionable. This was predicated mainly on his irresponsible conduct in relation to his chronic medication and his attitude to life in general. The accused was also not ready to admit his addiction and doubt existed whether he would gain insight into his substance abuse disorder. Mrs Naudé therefore recommended that the accused be referred back to court for the criminal trial to proceed.

[5] As indicated above, the accused terminated the mandate of LASA on 18 December 2023 and elected to conduct his own defence. On 08 January 2024, he pleaded guilty to a charge of theft of ten (10) x 40 grams of Smarties sweets with a total value of R119.90. The Magistrate invoked the provisions of section 112(1)(b) of the CPA. The peremptory questioning of the accused is recorded as follows according to the record:

"COURT: Are you going to answer to this Court's questions, or to exercise your right of remaining silent?

ACCUSED: I will answer the Court's questions, your Worship.

COURT: Why do you say, you are guilty? What did you do?

ACCUSED: On 28 February I went to Shoprite and stole those Smarties. When I was exiting the store, one of the security guards arrested me.

COURT: How did you steal? How did you steal the Smarties?

ACCUSED: I went to the Smarties shelf, took them and put them in my pocket.

COURT: Why did you steal?

ACCUSED: I had an addiction problem, Your Worship, drugs.

COURT: I do not understand. Were you going to eat them? Sell them?

ACCUSED: I was going to sell them so that I can Nyaope, Your Worship.

COURT: Did you know that what you are doing was wrong?

ACCUSED: Yes, Your Worship.

COURT : State.

PROSECUTOR: The state accepts the plea, Your Worship."

[6] Following the questioning of the accused, the State accepted the plea without explicitly indicating if the facts which the accused admitted and on which his plea of guilty was based was in accordance with the facts at the disposal of the State. In a four (4) line judgment, the accused was convicted as charged.

[7] The State proved, amongst others, nine (9) previous convictions for theft which the accused admitted. The present conviction of theft constitutes the tenth conviction for theft.

[8] In addressing the court in mitigation of sentence, the accused indicated that he was thirty-five (35) years old and unmarried with no children. To generate an income, he washed cars, earning between R150.00 to R200.00 per day. The accused pleaded for leniency and implored the Magistrate to consider the imposition of a fine which he proposed in an amount of R1000.00 alternatively a wholly suspended sentence. The accused blamed his numerous blushes with the law on his addiction to nyaope (an addictive street drug). He sought to convince the Magistrate that he of own volition ceased or stopped the use of the drug in September 2023. He explained in graphic detail the *modus operandi* he employed to access nyaope whilst being an awaiting trial detainee.

[9] Mr Nxumalo for the prosecution asserted that the accused had created a "*curriculum vitae"* for himself in that he had several relevant previous convictions. He contended that the accused was not capable of rehabilitation. Mr Nxumalo held the opinion that no sentence other than direct imprisonment of three (3) years imprisonment was suitable. He concluded by avowing that the accused had himself to blame as he was the author of his own misfortune regarding his addiction. He concluded with a very disrespectful, ill-founded, and regrettable statement that the accused "**should take himself out**" – which was steeped in ambiguity as it could be interpreted as meaning that the accused should take his own life or that the accused should be rehabilitated

on his own violation, which evidently the accused failed to attain over an extended period of time.

[10] To understand the full extent of the query I directed to the Magistrate, it is prudent to extract certain relevant portions of the judgment on sentence which equally lacks the decorum required of a judicial officer, which should be not to sentence in anger or revenge. The judgment in relevant part, reads as follows:

"You are not a first offender. You have many, many previous convictions for the very same offence of theft. When I go through this record, you indicated in your plea that the reason why you steal is that you wanted to sell so that you can go and buy drugs, because of your addiction.

When one goes through the record, the charge sheet, you were even at some stage taken to the rehab when you were in custody pending the finalisation of this very same matter. According to the report, they could not assist you because when they medically checked you, you were still using. You had injected yourself, meaning that you were still using these drugs when you were in prison.

On the last appearance, I asked you as to when did you stop using drugs and you said September last year. In September you were still in custody, meaning that you were confirming that you were using these drugs whilst in custody. You confidently so confirmed that you were using this drugs and you even told this court how you managed to access the drugs whilst you are custody.

I am mentioning this, the thing of drugs, that you are using drugs because you indicated the reason why you stole this because of your drug addiction. It seems from your conduct, especially whilst you were in custody, that you enjoy it. You enjoy using these drugs; that is why you enjoy stealing.

You go to stores to steal so that you can continue enjoy using these drugs. In the meantime, as I have indicated, you are causing other people's jobs and you do not care. I am also very much worried in the manner in which you were pleading. It means that ….it showed that you feel entitled. You did not

see any wrong in stealing. But let me sensitise you. You are 34 years old and time does not wait for anyone. According to your previous convictions you started as early as 2011 and you have been committing this offence up until now; of theft.

Meaning that you are started when you were about 21 and now you are about 34 and you are not ready to stop stealing. That is why, even when you were pleading you were reciting; you know what to say and when. You are so used to the system. You are destroying your own future, no one else's future. You are 34 years. If you want to change, you can still change. But as I have indicated, it is the duty of this Court to pass a proper message out there. If they see a person who committed this many offences, after being convicted, out there, they will lose trust. Yourself, if you are not given a proper sentence, definitely in no time you are going to come back, even after you have committed the very same offenses. So not passing a proper sentence is not going to do you any good. But it means that will harm you.

So I hope this time around you will reconsider. Maybe make a U-turn and come out a better person. Not a thief. Not a drug addict. That is what I am saying. Look at your behaviour. Just take things serious as they say. Take things serious. You are not serious at all and there is no joke here. It is your own future. You are being sentenced, and you are yawning. I do not know whether you are really listening to what I am saying. You are destroying your own future, sir. Only if you can tell yourself that stealing is not going to do me any good. I am destroying myself. You are destroying community out there. You are hurting your family. Just come back to your senses. Think positively. Stop doing that, it is wrong. As I have indicated that the aggravating factors of this case, outweighs your personal circumstances. With the hope that this sentence this time will change you. You are sentenced to three year's imprisonment.

Court: Know that you have the right to appeal against the sentence. Actually if you are not satisfied you can do that on your own, through Legal Aid, or through legal representative of your own choice within 14 days from today. I am not going to proceed with the section 103 because you were already declared unfit to possess a firearm and know that this is a reviewable

sentence. Meaning that this record is going to be send to Judges; for them to check if justice was done in this case. If you want to make any representation, you can do that seven days from today.

Accused: I understand, your Worship.

Court: you can stand down."

[11] On a conspectus of the proceedings, it appeared to me that the sentence imposed by the Magistrate did not accord with the principle of proportionality and did not address the rehabilitation aspect of punishment. This was notwithstanding irrefutable evidence that the accused suffered from an addiction over a protracted period. I therefore had grave misgivings as to whether the sentence imposed was in accordance with justice. I therefore caused a query to be forwarded to the Magistrate. The response is terse. It fails to address the core of the query. Notwithstanding this Court referring the Magistrate to case law, the Magistrate failed to comment on same.

[12] The Magistrate's reply reads as follows:

"2…. I took into consideration the value of the items. I humbly concede that the value us minimal, but I addressed in my sentence in page 2, paragraph 20.

Though the sentence is heavy, I did not only take the value into consideration. I also considered other factors inter alia his demeanour in court had a negative impact as he felt entitled, he had no remorse and showed no respect.

The issue of the accused not being a suitable candidate for rehabilitation was addressed in page 3. Considering the fact that he was refused admission at a rehab centre because he tested positive whilst in custody. Hence, I concluded he was not suitable for rehabilitation.

3. After considering all above I decided that the sentence was appropriate…"

(emphasis added)

[13] Recent judgments from this Division are replete with authority on the peremptory decorum expected of a judicial officer during the sentencing phase of a criminal trial (*Diniso v S* (CA14/22) [2023] ZANWHC 11 (7 February 2023) at paragraph [20]). Section 35 of the Constitution of South Africa, Act 108 of 1996 entrenches the right of an accused to a fair trial, which includes a fair sentencing process. The comments levelled at the accused in the sentence proceedings by the Magistrate and the prosecutor is regrettable. The decorum of the sentence proceedings in the court *a quo* falls gravely shy of the spirit and ethos of a plethora of rights that the accused was clothed with, irrespective of the present conviction and an old book of sins.

[14] Whilst the personal circumstances of the accused were glossed over, the Magistrate omitted to consider that the accused was a trial awaiting detainee from his date of arrest on 28 February 2023 to the date of sentencing 10 January 2024, a period close on eleven (11) months. There is no clear indication if the stolen items were recovered, although the accused admitted that it was in his pocket when he attempted to leave Shoprite Checkers. The Magistrate did not take due cognizance that two of the accused previous convictions could be put into operation.

[15] Sentence is about proportionality. The principle of proportionality is well established in our jurisprudence. It invokes the application of the well-known and trite triad. Inclusive amongst the personal circumstances of the accused would be relevant criminal history. However, sentence should never be increased or made heavier to the point that it is not proportionate to the crime committed merely to prevent recidivism. See: *S v Salman* [2008] JOL 21701 (E).

[16] In *S v Motau* (HC Review 36/2018) [2019] North West High Court, Mahikeng (30 January 2019), (Petersen AJ (as he then was) *et* Djaje J (as she then was)) stated as follows in the context of recidivism in 'shoplifting' matters in a matter which emanated from the Ga-Rankuwa District Court:

> "[18] Notwithstanding section 271(4) of the Criminal Procedure Act, a court whilst having regard to previous convictions of an accused should not lose sight of the fact that its ultimate duty is to punish an accused for the crime he has committed and the circumstances surrounding the commission of the crime. See *S v Jass* 1992 (2) SACR 101 (C) and *S v Baartman* 1997 (1) SCAR 304 (E).
>
> [19] In *S v May* 1999 (1) SACR 565 (C), Selikowitz J said the following in the context of recidivism involving minor offences of so-called "shoplifting" which has been echoed in a plethora of subsequent cases:
>
> 'The first point that I want to emphasise is that notwithstanding recidivism, and a recurrence in regard to the commission of the same offence, in weighing up a sentence the court must never lose sight of the actual offence for which sentence is being imposed.
>
> There are a number of examples in our law of people who have regularly been caught in possession of dagga, and the courts have observed that this

sort of social problem cannot be cured by simply imposing heavier and heavier sentences.

Similarly, in regard to petty theft, the court has made the same observations. I might refer, for example, to the cases of *S v Richards* 1990 (1) SACR 695 (C); *S v Stuurman* 1991 (2) SACR 231 (E); and *S v Baartman* 1997 (1) SACR 304 (E).

…

That brings me to the second matter which I wish to emphasise and that is that there is no evidence to indicate that any attempts have been made to subject the appellant to a rehabilitation programme to help her to overcome her urge to steal.

…

It seems to me that the time has come that the Court ought not to be looking towards a simple imprisonment for this appellant, but that in the interests of society some positive steps should be taken to assist her, if not for her own benefit, then at least for the benefit of society…"

[20] In *S v Matlotlo* 2004 (2) SACR 549 (T), Bosielo J adopted a similar approach to the *May* decision. It is apposite to refer to what he said:

"[1] The facts of this case may, at first glance, appear prosaic but the ultimate sentence imposed on the accused and the reasons advanced by the learned magistrate deserve serious consideration. The accused, a 25-year-old male was convicted on one count of shoplifting following upon his plea of guilty. The value of the stolen items is estimated to be a paltry R50. Despite his plea for a lenient sentence, the accused was sentenced to direct imprisonment for three years.

[2] When the matter first came before me on automatic review, I had grave misgivings about the appropriateness of the sentence imposed on the accused. I then sent a query to the magistrate in the following terms:

‘1. The learned magistrate is respectfully requested to furnish reasons for the sentence imposed on the accused, which appears *prima facie* to be disturbingly disproportionate to the offence committed by the accused.

2. In view of the accused's previous convictions for similar offences, was it not prudent for the magistrate to procure a pre-sentence report by an appropriate expert with a view to obtaining a full report about the accused's pathology and possible recommendations about an appropriate sentence?’

[3] I feel obliged to state, in fairness to the magistrate, that my query served as a necessary fillip to galvanise her into real action. Her comprehensive and well-researched response attests to hours of hard work and research. However, the essence of her response is that she still maintains, primarily but not exclusively, that due to the accused's five previous convictions for similar offences, the sentence of imprisonment for three years is appropriate. Although two senior advocates from the Director of Public Prosecutions seem to be in unison with the sentence imposed on the accused, particularly the *ratio* for the sentence, they ultimately recommend interference with the sentence in a manner, which will result in half of the sentence being suspended on suitable conditions. For reasons, which follow hereunder, I do not agree with the suggestions made by the office of the Director of Public Prosecutions.

[4] It is clear from the accused’s records of previous convictions that he has a serious pathology. He is clearly a kleptomaniac. The accused’s first conviction for theft was on 7 June 1999 for which he was sentenced to imprisonment for six months, which was wholly suspended for five years on suitable conditions. His penultimate conviction for theft was on 8 July 2003, for which he was sentenced to imprisonment for six months. In between the first and last convictions, the accused had three other convictions for theft for which he was sentenced, firstly to a fine of R800 on 7 February 2000, then to 150 days’ imprisonment, suspended for four years on suitable conditions. On 14 October 1999 and again to 150 days’ imprisonment suspended for four years on suitable conditions on 24 July 2000. It is worth noting that no efforts were ever made in the past to subject the accused to relevant and

appropriate psychological evaluation and a suitable rehabilitative programme to help him to overcome his urge to steal. This is despite clear signs of recidivism, which were gradually, but certainly, gaining momentum. As Selikowitz correctly remarked in *S v May* 1999 (1) SACR 565 (C) at 565*h*:

'This matter reflects the tragic side of human life and possibly the inadequacies of our system of criminal justice as an instrument for rehabilitation and reform.'

This is sadly the case in this matter.

[5] The learned magistrate appears to have misconstrued the importance and relevance of proper investigation by qualified professionals in the field of either psychology or psychiatry regarding the accused's pathology and the treatment which they may have recommended. I regret to have to state that despite having referred me to *S v May (supra*) the two advocates from the Director of Public Prosecutions appear to have missed the quintessence of the judgment. Selikowitz J incisively made a point, which I feel obliged to reiterate, at 566*j* - 567*a* when he stated:

'It seems to me that the time has come that the Court ought not to be looking towards a simple imprisonment for this appellant, but that in the interests of society some positive steps should be taken to assist her, if not for her own benefit, then at least for the benefit of society.'

Without doubt, I am in respectful agreement with this patently correct and progressive approach towards sentencing an accused who clearly is afflicted by some pathology.

[6] In conclusion, I find that the magistrate did not apply her mind properly to the sentence, which she imposed. The sentence cannot be allowed to stand…"

[21] I accept that judicial officers in the district courts work under tremendous pressure confronted by recidivism in the context of the crime of theft from shops on a daily basis. The learned district magistrate states that the offence is very prevalent in his district. He highlights the problem of

recidivism and holds the view that if sentences are too light this contributes to the problem. The abiding reality is that the offence is prevalent in our country as a whole. The learned district magistrate justifies his approach to sentence is cases such as the present on the three review matters confirmed in this Division and though it does not appear from his judgment on sentence, his reply to this court demonstrates that the previous convictions of the accused weighed heavily on his mind. As shown above, the approach militates against the decision of the High Courts in matters of this nature. The imposition of ever increasing sentences of imprisonment will not assist in dealing with underlying problems that each individual accused may have by engaging in repeat offences. The approach in *Matlotlo* above is salutary and should in my view be adopted as a rule of practice."

See too: *S v Hlongwane* (HC Review 17/2019) [2019] North West High Court, Mahikeng (04 July 2019) by (Petersen AJ (as he then was) *et* Djaje ADJP (as she then was) concurring.

[17] By way of comparison, decisions in other Divisions are aligned to the approach adumbrated in *Motau supra* and the decisions referred to therein. In *S v Hauwel* 2018 (2) SACR 436 (WCC) (20 December 2017), for example, the weight to be attached to previous convictions was set out as follows:

"[10] The trial court cannot be faulted for concluding that the path of the accused required a severe corrective measure. A prison sentence can hardly be avoided. The proximity between the repeat offences is both pronounced and obtrusive - S v Scheepers 2006 (1) SACR 72 (SCA) at para 11. Despite this, in my view, 18 months direct imprisonment for theft of biltong to the value of R1154-89 is not only severe but shocking in its disproportion to the offence. It is also avoidable, having regard to the other alternatives which the trial court did not consider.

[11] In sentencing, one should guard against treating persons differently in a way which impairs their fundamental dignity as human beings, who are inherently equal in dignity Prinsloo v Van Der Linde and Another 1997 (3) SA 1012 (CC) at para 31. Unlike a first offender, the book of old sins of an accused is opened for consideration when previous convictions are admitted or proven. Depending on the circumstances, the previous convictions may call for consideration of a severe sentence. A severe sentence does not mean a disproportionate sentence.

…

[13] Proportionality between the offence and punishment Is part of our law on sentencing. The previous convictions of an accused have a place in sentencing an offender, as required by section 271(4) of the CPA. They should, however, not be permitted to overwhelm the triad in Zinn, which remain factors which are relevant to just sentencing. The fact that one is dealing with a repeat offender with previous convictions is not sufficient reason to ignore the duty to balance the relevant factors and the purpose of punishment. The sense of proportion should not be lost and sentences be imposed which, by comparison, are too harsh - *S v Smith* 2003 (2) SACR 135 (SCA) at para 5.

[14] The number of times that the offence is being committed does not make it less petty. It remains petty no matter how often it is committed - *S v Stange* 2008 (2) SACR 27 (C) at para 22."

[18] The crime remains theft of items of a minimal value. A relevant criminal record does not transform the present crime to the character of a more serious offence. There is, no underscoring the role that extant and relevant previous convictions play in the sentencing process. The adage that punishment should fit the crime is seminal to the aims and purposes of sentence. Apart from placing undue emphasis on the accused previous criminal history, the Magistrate placed store on the demeanour of the accused in

court. This the Magistrate equated to it having a negative impact because the accused was said to feel entitled and showing no remorse or respect. This criticism is not borne out by the record and is misplaced. It is not deserving of any closer scrutiny, given the conclusion arrived at below.

[19] Given the criminal history of the accused it is undeniable that the criminal justice system failed the accused. The Magistrate was implicitly aware that the accused was grappling with an acute substance disorder. This was evident from the history of the matter and echoed in his plea of guilty and *ex parte* address in mitigation of sentence. The accused also ventilated the ease with which his substance disorder is supported while he was a trial awaiting detainee. The Magistrate still imposed a custodial sentence which would only serve to exacerbate his substance disorder.

[20] Notwithstanding, a failed attempt at seeking intervention for the accused at the Treatment Centre, a more concerted effort should have been made to consider alternative forms of punishment or intervention during the custodial sentence, if not for the accused, then at least for the interests of society. The Magistrate simply adopted a *non-possumus* approach which was denounced in *May supra*.

[21] Lastly, there are two procedural shortcomings in the proceedings which merits attention. Firstly, the Magistrate was of the view that the provisions of section 103 of the Firearms Control Act 60 of 2000 ('the FCA') were not applicable as the accused had previously been declared unfit to possess a firearm. The

Magistrate is clearly unaware of the sentiments expressed in *Motau supra* regarding the correct application of section 103 of the FCA, which was cited with approval in the Gauteng Division, Johannesburg in *S v Thobela* 2020 (2) SACR 222 (GJ). At paragraph 25 of *Motau supra* the following is said:

> '[25] The learned district magistrate submits that the record was transcribed incorrectly and should have reflected that he did not hold an enquiry as the accused had previously been declared unfit to possess a firearm. In my view, the basis for this submission does not accord with the purport of the legislation. The accused may have been declared unfit to possess a firearm previously but that does not mean no enquiry should be held when further convictions calling for an enquiry materialise. The Firearms Control Act has no provision supporting the view of the learned district magistrate. The declaration of unfitness to possess a firearm remains in place for a period of 5 years' and not indefinitely.
>
> Section 103(6) of Act 60 of 2000 provides:
>
> "Subject to section 9(3)*(b)* and after a period of five years calculated from the date of the decision leading to the status of unfitness to possess a firearm, the person who has become or been declared unfit to possess a firearm may apply for a new competency certificate, licence, authorisation or permit in accordance with the provisions of this Act."
>
> It is therefore imperative that an enquiry be held as required by section 103(1) or (2) of the Firearms Control Act on each occasion an accused is convicted.'"

[22] Secondly, the peremptory review rights were not correctly and sufficiently explained by the Magistrate. The accused was informed that any representations that he wished to make had to be submitted within **seven (7) days**, precisely where the

representations were to be submitted is not clear. Section 303 of the CPA is peremptory and reads as follows:

> "**303 Transmission of record**
>
> The clerk of the court in question shall within one week after the determination of a case referred to in paragraph *(a)* of section 302(1) forward to the registrar of the provincial or local division having jurisdiction the record of the proceedings in the case or a copy thereof certified by such clerk, together with such remarks as the presiding judicial officer may wish to append thereto, and with any written statement or argument which the person convicted may within three days after imposition of the sentence furnish to the clerk of the court, and such registrar shall, as soon as possible, lay the same in chambers before a judge of that division for his consideration."

[23] In *S v Mmusi and S v Maruping* (HC Reviews 08 and 09/2021) [2022] North West High Court, Mahikeng (21 January 2022), (Petersen J *et* Hendricks DJP (as he then was) concurring), the following was said regarding the explanation of the rights of appeal and review to an undefended accused:

> "[29] In terms of section 35(3)(o) of the Constitution of the Republic of South Africa, 1996, every accused person has a right to a fair trial, which includes the right:
>
> > "of appeal to, or review by, a higher court."
>
> [30] An accused's right of appeal and review, where applicable, must be explained as clearly and simply as possible. Reviewable matters must further be submitted on review within seven (7) days…"

[24] In the result, the following order is made:

1. The sentence of three (3) years imprisonment imposed by **Magistrate Tsoku** imposed on 10 January 2024 is reviewed and set aside and replaced with the following sentence:

"1. The accused is sentenced to three years' imprisonment, half of which is suspended for three years on condition that the accused is not convicted of theft committed during the period of suspension and on condition that he reports to the Dr Fabian and Florence Rebeiro Treatment Centre for Drug and Substance Abuse in Cullinan Fabian within seven days of his release from the Correctional Centre for an assessment and that he thereafter submits himself for such further treatment as the professional officers of the hospital so direct and that he co-operates fully in the said treatment.

2. The officer commanding the Correctional Centre where the accused is detained is to ensure that the accused is subjected to a rehabilitation programme for drug addiction as part of the programmes he is required to complete during his incarceration, which should include a life skills programme. The accused must submit himself to such treatment and/or programmes as determined by the officer commanding the Correctional Centre and he must fully co-operate and participate in the programmes.

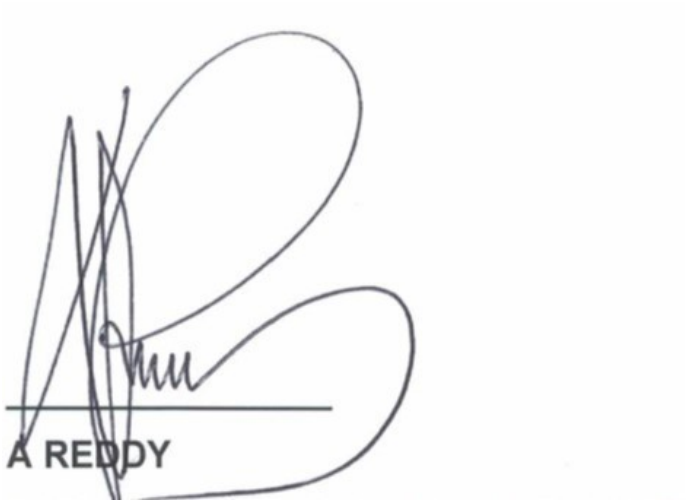
3. The officer commanding the Correctional Centre from which the accused is to be released, is authorised and directed to:

(i) make an appointment for the accused at Dr Fabian and Florence Rebeiro Treatment Centre for Drug and Substance Abuse in Cullinan so

as to enable him to comply with the requirements of paragraph 1 above and advise the accused of the date, time and place where he must report;

(ii) furnish the accused upon his release from the Correctional Centre with a letter addressed to the official in charge at Dr Fabian and Florence Rebeiro Treatment Centre for Drug and Substance Abuse in Cullinan in which the terms of this sentence are set out and to which are attached a copy of the accused's criminal record; and a copy of the social work report which is part of the trial record in this case."

2. The Magistrate is to ensure that the accused is brought before the court as a matter of urgency for the correct application of the provisions of section 103(1) of the Firearms Control Act 60 of 2000.



ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

I agree.

_____

A H PETERSEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG