



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

High Court Ref No: **1994**

Case No: **70/W 3389548**

Magistrate's Ref No: **01/2019**

Date: **27 February 2019**

In the review matter of:

THE STATE

vs

ZEN GARLAND

REVIEW JUDGEMENT

FRANCIS, AJ

1. This matter has been referred to this Court by the Magistrate of Montagu with a recommendation that the admission of guilt fine paid by the accused, on 24 June 2011, when he was still a minor, and the resultant deemed conviction in terms of

section 57(6) of the Criminal Procedure Act 51 of 1977, be set aside. This follows representations made by the accused's legal representative, Mr Johann Bester, as well as an affidavit made by the accused himself and a confirmatory affidavit by his mother. They all set out their objections to the admission of guilt and deemed conviction.

2. According to the accused's affidavit, he was apprehended at his mother's residence for the unlawful possession of cannabis in contravention of section 4(b) of the Drugs and Drugs Trafficking Act, 140 of 1992. He was aged 17 at the time. The accused was taken to the Montagu Police Station, accompanied by his mother, where he was charged for the illegal possession of cannabis and his fingerprints were taken. The fact that he was under 18 years of age was apparently an issue for the police officers but the arresting officer told the accused and his mother that if the accused paid an admission of guilt fine of R40, the Accused would be released and that would be the end of the matter. Both the Accused and his mother were relieved by this offer and immediately agreed. The Accused was given a written notice making provision for the payment of an admission of guilt fine in terms of section 56(1)(c) of the Criminal Procedure Act, his mother paid the fine of R40, and the Accused was then released from custody. At no stage was either the accused or his mother made aware of the full consequences of paying an admission of guilt fine. Nor were the provisions of section 18 of the Child Justice Act, 75 of 2008 applied - in terms of this section, it was obligatory to hold a preliminary inquiry relating to the nature of the

allegations, and the ensuing consequences thereof for the accused, prior to any sanction being imposed.

3. The accused's mother was with him during the arrest and the payment of the admission of guilt fine and signed an affidavit in which she confirmed the accuracy of the facts recounted in the accused's affidavit.
4. Mr Bester furnished a helpful submission which may be summarised thus:
 - 4.1 The accused was a child at the time of his arrest and ought to have been treated as such by the arresting officer.
 - 4.2 The accused was alleged to have been in possession of a small quantity of drugs and his alleged offence is listed as item 16 on schedule 1 to the Child Justice Act. As such, the accused ought to have appeared at a preliminary inquiry.
 - 4.3 Section 18(2) of the Child Justice Act expressly provides that section 56(1)(c) of the Criminal Procedure Act - relating to an admission of guilt and payment of a fine - does not apply to a written notice in terms of the Child Justice Act.
 - 4.4 Contrary to the provisions of sections 18(1) and 18(2) of the Child Justice Act, the accused was given a notice in terms of section 56

of the Criminal Procedure Act and advised to pay an admission of guilt fine of R40.

4.5 It was not possible to obtain a copy of the section 56 notice which the arresting officer had issued to the accused due to the lapse of time. Once the audit of the admission of guilt records had been conducted, these records were destroyed in terms of the Departmental and Archival Instructions.

4.6 The arresting officer did not advise the accused, and/or his mother, of the accused's rights and the consequences of paying the admission of guilt fine.

5. On the basis of the documents contained in the record as well as the facts recounted in the accused's affidavit, there is much to find support in the submissions made by Mr Bester. The courts, especially after the advent of the Constitution, have insisted that a fair procedure be followed where an accused is invited to consider paying an admission of guilt fine (see, for example ***S v Pryce 2001 (1) SACR 110 (C)***). In ***S v Parsons 2013 (1) SACR 38 (WCC)*** and ***S v Tong 2013 (1) SACR (WCC)***, this Court, with particular emphasis on constitutional values, has held that an accused person should be properly warned of the consequences of signing an admission of guilt fine.

6. The irregularity ought to have been picked up by the judicial officer at the Montagu Magistrates Court when subsequently examining the documents as the Magistrate was obliged to do in terms of section 57(7) of the Criminal Procedure Act. If the Magistrate had done his/her job properly, it would have been noticed that the accused was a child and the payment of an admission of guilt fine by him was proscribed by section 18(2) of the Child Justice Act. The failure of justice was compounded by the fact that the accused was a minor at the time of his arrest and the arresting officer was aware of this fact but nonetheless continued with the issue of a section 56 notice.

7. The Child Justice Act approaches the plight of children in conflict with the law comprehensively, taking into account their vulnerability and special needs. It aims to prevent children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, processes, procedures, mechanisms, services or options more suitable to the needs of children, including use of diversion (see the Preamble and section 2(d) of the Child Justice Act). Where a child is alleged to have committed a minor offence, such as in the case of the accused, police officials considering release or detention of a child after arrest, but prior to the first appearance at a preliminary inquiry, should ideally release the child on written notice into the care of a parent, an appropriate adult, or a guardian (section 21(2)(a) of the Child Justice Act).

8. In the matter at hand, the conduct of the arresting officer fell far short of what is required when issuing a section 56 notice. In addition, because the accused was a child, the issuing of the section 56 admission of guilt notice by the arresting officer was contrary to the provisions of section 18(2) of the Child Justice Act; this, in and of itself, is fatal. This failure of justice is buttressed by the fact that the Child Justice Act was ignored in its entirety. For these reasons, I consider that the accused's admission of guilt was not in accordance with justice and should be set aside.
9. In the circumstances, the following order is made:
 - (a) The accused's admission of guilt in terms of section 57 of the Criminal Procedure Act 51 of 1977, made on 24 June 2011, is set aside.
 - (b) The resultant entering in the criminal record book of the particulars contemplated in section 57(6) of the Criminal Procedure Act by the clerk of the court is set aside and such particulars shall be expunged from the criminal record book.

I agree and it is so ordered.

FRANCIS, AJ

NUKU, J