THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 20367/2014

In the matter between:

NICOLE ROMEY DE VILLIERS **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral Citation: *De Villiers v S* (20367/2014) [2015] ZASCA 119 (11 September 2015)

Coram: Lewis, Mhlantla, Leach, Majiedt and Petse JJA

Heard: 26 August 2015

Delivered: 11 September 2015

Summary: Failure to consider the best interests of an offender's young children, when imposing a sentence, constitutes a grave misdirection: evidence admitted on appeal to allow for determination of children's best interests: custodial sentence appropriate even though appellant was primary caregiver because of the seriousness of the crime – fraud on employer when in position of trust.

ORDER

On appeal from: Gauteng Local Division of the High Court, Johannesburg (Monama and Tshabalala JJ sitting as court of appeal).

1 The appeal is upheld.

2 The order of the court a quo is set aside and replaced with the following:

'The appeal is upheld:

The sentence imposed by the trial court is set aside and the following sentence is imposed:

The accused is sentenced, in terms of s 276(1)*(i)* of the Criminal Procedure Act 51 of 1977, to three years' imprisonment from which she may be placed under correctional supervision in the discretion of the Commissioner or a parole board.'

3 The sentence shall take effect four weeks from the date of this order.'

JUDGMENT

Lewis JA (Mhlantla, Leach, Majiedt and Petse JJA concurring)

[1] The court is asked in this appeal to consider the appropriate sentence to be imposed where the appellant has been convicted on 31 counts of fraud and one count of contravening s 4*(b)*(i) of the Prevention of Organised Crime Act 121 of 1998 (POCA). The principal issue before us is the weight to be attached to the fact that the appellant, Ms Nicole Romey de Villiers (nee Munitz), is the primary caregiver of her two children, Jordan, a girl, now aged ten and Jesse, an eight-year old boy.

[2] The offences charged were committed over a period of some five months from July to November 2007. De Villiers fraudulently took from the trust account of

the attorney for whom she worked as a paralegal assistant some R1 409 000 which she paid into her own bank accounts, or those of her husband and father-in-law, and entities controlled by them.

[3] De Villiers was arrested on 4 March 2009. She was then 28. She was charged, together with her husband, Jean Paul de Villiers (Jean), and her father-in-law, Pierre Joubert de Villiers (Pierre). She pleaded guilty to all the charges before the trial court in the Regional Court, Johannesburg. The charges against Jean and Pierre were, for some unexplained reason, dropped. De Villiers was convicted on all the charges against her on 18 September 2009.

[4] On 7 March 2011 she was sentenced to eight years' imprisonment, three years of which were suspended on the usual conditions. She had, before being sentenced, repaid the full amount (some R400 000) which she had personally taken from her former employer's trust account and various assets that she had acquired were forfeited to the State under the POCA. The charges of fraud and contravention of the provisions of the POCA were taken as one for the purpose of sentence. The regional court had before it, before sentencing, the evidence and pre-sentence report of Ms Annette Vergeer, a social worker and probation officer; the evidence and pre-sentence report of Ms Maureen Lang, also a social worker; the evidence and pre-sentence report of Ms Yvette Esprey, a clinical psychologist, and the evidence and pre-sentence report of Dr W J Levin, a general physician who specialized in the treatment of Attention Deficit Hyperactivity Disorder (ADHD). An attorney who worked for the former employer also testified as to the character of De Villiers, and as to her circumstances at the time when the offences were committed.

[5] All the evidence before the court in relation to sentencing concerned the personal circumstances of De Villiers; her background; her history of drug abuse; her marriage to Jean and her family circumstances prior to sentencing. I shall turn to these in due course. Regrettably, the regional magistrate barely referred to the evidence when sentencing, and had no regard at all to the fact that De Villiers was

the primary caregiver of her two very young children. He said that it would be wrong to overemphasise her personal circumstances, and that the seriousness of the offences should be addressed.

[6] That is, of course, correct. But the court failed to have regard to any of the psychological and medical evidence before it, and did not, as it should have done, consider the interests of the children (*S v M (Centre for Child Law as amicus curiae*) 2007 (2) SACR 539 (CC)). This was a grave misdirection, as the State on appeal conceded. There were several other misdirections committed by the trial court: the presiding officer did not read the report of the probation officer (Vergeer) fully; he did not recall Lang's report and none of the reports before him were examined for accuracy.

[7] De Villiers was released on bail pending an appeal to the Gauteng Local Division (Johannesburg). The full bench of that court (Monama and Tshabalala JJ) also failed to consider the interests of the childen, and it too disregarded the substance of the reports presented to the regional court before sentencing. The high court's statement on appeal, that the trial court had considered all the evidence 'meticulously', was itself a serious misdirection. It confirmed the sentence imposed by the regional court. The full bench also refused leave to appeal and ordered that De Villier's bail be withdrawn, as it was. The appeal against the judgment of the Gauteng Regional Division lies with the leave of this court.

[8] Before the hearing of the appeal, this court asked the Centre for Child Law to apply to be admitted as an amicus curiae, given the importance of the rights of the children, which were completely ignored by the trial court and the full bench. An application followed and was granted. Neither De Villiers nor the State objected to the application. The court is indebted to Professor Ann Skelton of the Centre for making very helpful submissions.

[9] As I have said, the State conceded that the courts below were guilty of grave misdirections, and that the sentence of eight years' imprisonment, only three of which were suspended, was unjustified in all the circumstances. The sentencing options canvassed before us at the hearing were correctional supervision under either s 276(1)*(h)* or 276(1)*(i)* of the Criminal Procedure Act 51 of 1977. The former (*(h)*) permits a court to impose a sentence of house arrest and community service after a report of a probation officer or correctional official has been placed before the court and for a fixed period of three years (s 276A(1)). The latter ((*i*)) entails imprisonment from which a person may be placed under correctional supervision in the discretion of the Commissioner of Correctional Services or a parole board, and may be for a period not exceeding five years (s 276A(2)).

[10] De Villiers and the amicus argued that direct imprisonment was not warranted, and would be detrimental to the interests of the two children. The State, however, argued that a non-custodial sentence would not be sufficient punishment given the gravity of the offences and the amount by which De Villier's former employer had been defrauded. It argued that a sentence under s 276(1)*(i)* was appropriate. Before turning to the question of the sentence to be imposed, however, it is important to consider the personal circumstances of De Villiers and the interests of the children. These emerge from the evidence that was before the regional court, including her testimony, and from a report prepared in July 2015 by a Dr Ronel Duchen, a senior counselling psychologist, which was admitted into evidence by this court on application by De Villiers at the hearing of the appeal. That report deals with the current position of De Villiers, her children and her family.

[11] The State asked that a report of the Family Advocate, served on the appellant a week before the hearing, also be admitted, despite the fact that it had not been filed in this court. We agreed to the admission of both reports even though the Family Advocate's report was handed up only at the hearing. (That report was prepared pursuant to an order of the South Gauteng High Court in June 2012, when the custody of the children and access to them by Jean was at issue. It has taken some three years for the Family Advocate to prepare it.) When considering the best

interests of children a court must consider evidence as to their current position to determine what their best interests require.

[12] Dr Duchen's report is a comprehensive one, prepared after consulting De Villiers, Jean, Pierre, his wife, De Villiers' mother, Ms Sharon Munitz, and the children Jordan and Jesse, both of whom were psychologically evaluated. Duchen also consulted the teachers of the children, De Villiers' current employer, and her psychiatrist.

[13] Duchen was requested to prepare the report by De Villiers in order to determine whether she is the children's primary caregiver; to ascertain the children's circumstances prior to the hearing of the appeal; to recommend steps to be taken should De Villiers be incarcerated; and to ascertain the effect of a custodial sentence on De Villiers.

De Villiers' history

[14] I shall discuss only briefly the personal circumstances that are relevant for the purpose of sentencing. These emerge from the evidence before the trial court and from Duchen's report. De Villiers is the youngest of four children. Her older brothers were at the time of the trial estranged from her. Her father died in a motor accident when she was nine, and she believed that he had actually committed suicide. She currently lives with her mother and her children. Her relationship with her mother has at times been fraught, especially after the death of her father. She had been very close to her father and was badly affected by his death. The family is Jewish, and De Villiers went to a Jewish high school. She did well academically until she started drinking and using marijuana. When she was 14 she attempted to commit suicide.

[15] After finishing school De Villiers experimented with cocaine, and in first year university started using heroin. Her mother evicted her from the family home, and

although she spent time with a brother who had moved to Australia, she continued to abuse drugs. She was admitted to a drug rehabilitation centre in 1999, but relapsed on her discharge six months' later. In 2001 she was admitted to another rehabilitation centre, Noupoort, where she spent 11 months. It was there that she met Jean, whom she married when they were both discharged.

[16] The marriage was a difficult one. Jean continued to use drugs. He was abusive both physically and emotionally, on her evidence, which was not disputed. They lived for much of the time with his parents in Pretoria. Pierre was an unrehabilitated insolvent with a penchant for luxury cars and high living. Jean worked for him but was frequently not paid any salary. When, in 2004, De Villiers began to work as a receptionist for an attorney, they lived entirely on her salary. She was soon appointed to a permanent position, and promoted to doing paralegal work – conveyancing. She thus had access to her former employer's trust account.

[17] In 2007 the De Villiers family was living an extravagant lifestyle that they simply could not afford. She felt under pressure from Jean and Pierre to support their extravagance and started helping herself to moneys from the trust account. She said she had always intended to pay it back as soon as the family had other income. But she kept taking substantial funds – small amounts at first but later very large sums, up to R112 140, at one time – and used the money to buy expensive luxury items for Jean and Pierre. She also acquired for herself a diamond engagement ring, a Rolex watch, and a Jaguar motor car. Although she claimed that she acquired these items at the instance of Jean and Pierre, she nonetheless used them and had the benefit of them.

[18] She reported to the social workers and psychologists that she was estranged at this time from her own family, and was emotionally dependent on Jean. She wanted to buy his affection and Pierre's approval. Both knew the source of the funds and enjoyed their benefit.

[19] At the time when the offences were committed Jordan was three years old and she was pregnant with Jesse. He was born in July 2007, shortly after she had first taken money from the trust account.

[20] Towards the end of 2007 the attorney for whom she worked discovered the frauds and dismissed her. He told her he would not lay charges. She sold paintings bought with the trust moneys, and gave the ring and watch to her former employer. The latter in fact laid charges in March 2008 against De Villiers, Jean and Pierre. They were arrested a year later and charged with fraud and contravention of the provisions of the POCA. But before then De Villiers had left Jean and attempted suicide in June 2008. In July 2008 she returned to Jean and she reverted to drug use.

[21] Despite moving with the children to live with her mother in November 2008, and being admitted to Houghton House (a rehabilitation centre in Johannesburg) for rehabilitation, De Villiers returned to Jean again in December 2008. She then overdosed on heroin and was admitted to hospital. After discharge in 2009, she moved in with her mother, taking the children with her. She testified that she has not since taken any drugs.

[22] De Villiers and her children have lived with her mother in Norwood, Johannesburg since April 2009. The children attend Jewish schools in the area, and De Villiers has become a devout Jew, involved with the Jewish community in the area. She has obtained work at Houghton House as a Group Manager, doing administrative work, including paying staff salaries, as well as doing counseling.

[23] She has instituted divorce proceedings against Jean, but these have dragged on and are not yet finalized. The reason for this, she said, was that Jean had been in and out of rehabilitation centres, and had frequently changed his legal representative, such that he has not appeared in court and finality cannot be

reached. He did, however, in June 2012 obtain a court order allowing him supervised access to the children on Sunday afternoons. He had exercised this right seldom, claiming that he could not afford to pay for the supervision of a social worker.

[24] As a result, he has been allowed to see the children in the presence of his parents. After their first visit, Jordan refused to return because she said her grandparents did not want her to be Jewish. Jesse has continued with the visits, save when Jean has been in rehabilitation. Jean has made a minute contribution to the maintenance of his children. They are entirely supported by De Villiers. Munitz, however, pays for some household expenses. She continues to work as a beautician, from home, and has a small pension and income. Munitz is 66 years old, and in ill-health. She has an addiction to sleeping pills and suffers from emphysema.

[25] De Villiers has flexible working hours and takes the children to school and does their homework with them. She is assisted by a domestic worker. Munitz is unable to take care of the children without assistance and cannot afford to maintain them. Duchen has advised that should De Villiers be given a custodial sentence, the children will lose their secure environment and be at risk. There is no one else in their current world that is able to care for them and to support them, she advised.

[26] The Family Advocate recommends, on the other hand, that should De Villiers be given a custodial sentence, the children be placed in the Jewish home for children, Arcadia, be reintegrated into their paternal family while at the home, and then live with the De Villiers grandparents. Before considering these possibilities it is necessary to deal briefly with the principles to be applied where a person convicted of an offence is the primary caregiver of children.

[27] These principles were set out comprehensively in the majority judgment of the Constitutional Court in *S v M* above. Central to that decision is s 28 of the Constitution, headed ‘Children’, the relevant provisions of which are:

'Every child has the right—

(a) to a name and a nationality from birth;
(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
(c) to basic nutrition, shelter, basic health care services and social services;
(d) to be protected from maltreatment, neglect, abuse or degradation;

. . .

(1) A child's best interests are of paramount importance in every matter concerning the child.

. . . .'

[28] Sachs J considered that s 28(2) is a self-standing right and an indication of how a court should balance other rights. The question to be asked when considering competing rights is what reasonable limitation can be placed on their application (para 14). Children's rights are paramount. But as the Constitutional Court has held subsequently, the child's rights are 'more important than anything else', but that not everything else is unimportant: *Centre for Child Law v Minister of Justice and Constitutional Development & others* 2009 (6) SA 632 (CC) para 29.

[29] In *S v M* the court asked whether, in sentencing a primary caregiver, a child's interests should be one of the factors considered under what has come to be known as the *Zinn* triad – in sentencing a court must consider the crime, the offender and the interests of society (*S v Zinn* 1969 (2) SA 537 (A) at 540G-H), a formula followed time without number in this court and others. The triad is well-explained by Friedman J in *S v Banda & others* 1991 (2) SA 352 (B) at 355A-C:

'The elements of the triad contain an equilibrium and a tension. A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others. This is not merely a formula, nor a judicial incantation, the mere stating whereof satisfies the requirements. What is necessary is that the Court shall consider, and try to balance evenly, the nature and circumstances of the

offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concern.'

The passage is cited in para 10 of *S v M*.

[30] When sentencing, a court must also, it is trite, consider the purposes of punishment – deterrence, prevention, and rehabilitation: see *Director of Public Prosecutions KwaZulu-Natal v P* 2006 (1) SA 243 (SCA) para 13, cited in para 10 of *S v M*. *DPP v P* said further that to these aims must be added the quality of mercy, though not mere sympathy for the offender.

[31] The amicus in *S v M* argued that it was not sufficient, when sentencing, to regard a child's interests as one of the circumstances of the offender. They must be considered independently, not subsumed into a consideration of the culpability and circumstances of the offending primary caregiver. The Constitutional Court accepted the submission, as well as that of the curator of the minor children in the matter, that a reading of s 28(1) together with s 28(2) of the Constitution, require that when a custodial sentence of a primary caregiver is in issue the court has four responsibilities: to establish whether there will be an impact on the child; to consider independently the child's best interests; to attach appropriate weight to those interests; and to ensure that the child will be taken care of if the primary caregiver is sent to prison.

[32] Sachs J said (para 33):

'Focused and informed attention needs to be given to the interests of children at appropriate moments in the sentencing process. The objective is to ensure that the sentencing court is in a position adequately to balance all the varied interests involved, including those of the children placed at risk. This should become a standard preoccupation of all sentencing courts. . . .Specific and well-informed attention will always have to be given to ensuring that the form of punishment imposed is the one that is least damaging to the interests of the

children, given the legitimate range of choices in the circumstances available to the sentencing court.'

The court recognized that a custodial sentence of a primary caregiver may be appropriate. In that case, it said, the court 'must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated' (para 36).

[33] M was the sole caregiver of her three children, and was financially responsible for them as well. But she had been convicted previously of fraud and was a compulsive gambler – the reason for her fraudulent conduct. She was convicted on 38 counts of fraud (the total sum involved was R29 000) and sentenced to four years' imprisonment. On appeal the high court (Western Cape) set aside one of the counts of fraud and reduced her sentence to five years' imprisonment and correctional supervision under s 276(1)*(i)* of the Act. She had already served several months in prison when her appeal to the Constitutional Court was considered. That court sentenced her to four years' imprisonment, wholly suspended on the usual conditions, and placed her under correctional supervision in terms of s 276(1)*(h)* of the Act.

[34] The principles formulated in *S v M* have been applied regularly since the decision. (And the judgment has earned international recognition in legal instruments in other states, by the United Nations, Human Rights Council and by the African Committee of Experts on the Rights and Welfare of the Child in their General Comment Number 1.) In a number of decisions where a woman (as primary caregiver) has been convicted of theft or of fraud, sentences have been set aside on appeal and reduced, or remitted to the trial court to consider sentence afresh, taking into account properly the interests of minor children (see, in this court, *Pillay v S* 2011 (2) SACR 409 (SCA)). In these matters the appeal court did not have before it sufficient information to impose sentence itself. In others (for example *Piater v S* [2014] ZASCA 134 (25 September 2014)) the court has considered the offences

committed to be too serious to warrant a non-custodial sentence. (In *Piater* the appellant was in any event not the sole caregiver of her children.)

[35] In a significant decision of the Constitutional Court, *MS v S (Centre for Child Law as amicus curiae)* 2011 (2) SACR 88 (CC), because the appellant was a repeat offender (as was the appellant in *S v M*), and because she was not the sole caregiver of her children and had lived with her husband and children, the court held that a custodial sentence would not compromise the children's best interests. In the judgment of the majority, Cameron J, dismissing a further appeal from this court, said (para 62):

'*S v M* has revolutionized sentencing in cases where the person convicted is the primary caregiver of young children. It has reasserted the central role of the interests of young children as an independent consideration in the sentencing process. Yet it would be wrong to apply *S v M* in cases that lie beyond its ambit. The mother in *S v M* was a single parent, and was almost exclusively burdened with the care of her children. There was no other parent who could, without disruption, step in during her absence to nurture the children, and provide the care they need, and to which they are constitutionally entitled.'

[36] He continued (para 63):

'That is not the case here. Mrs S is not the children's sole caregiver. She is not "almost wholly responsible" for their care. Despite heartache and turbulence . . . Mrs S is united with the father of her children. He is their co-resident parent. And he is willing to care for them during her incarceration. . . . A non-custodial sentence is therefore not necessary to ensure their nurturing. And a custodial sentence will not inappropriately compromise the children's best interests.' (Footnote omitted.)

The circumstances of De Villiers and the children's best interests

[37] The interests of the children Jordan and Jesse must be examined independently. This, as I have said, both the trial court and the full bench failed dismally to do, ignoring the evidence that was before both courts, and not calling for

a proper investigation into De Villiers' current position or into the interests of Jordan and Jesse.

[38] De Villiers argued before us that she has been rehabilitated: she now works as an administrator at a rehabilitation centre, Houghton House, and counsels residents there as well. She has become a devout member of the Jewish community, regularly attending synagogue with her children, and having a close connection to her Rabbi. Her employer has indicated to Dr Duchen that she is a dedicated and diligent employee.

[39] She supports the children financially and is their primary caregiver. Munitz, while able to help with the children's daily lives, is unable to care for them on her own. She is ill, has psychological problems and abuses prescription medication. There is no other family member who is able to care for them in the same way that De Villiers does. Moreover, Munitz's financial position is not such that she can support the children. She earns very little as a beautician and has only a small pension.

[40] In the period in which De Villiers was incarcerated (after losing her appeal in the high court and before this court gave leave to appeal, some seven weeks), the children were deeply disturbed and unhappy. Since then they have adjusted and their teachers are happy with their progress and behaviour. They are settled into routines and have a good relationship with their mother. They are emotionally secure. If deprived of their mother's care, advised Duchen, they would be placed at risk.

[41] According to Duchen, psychological testing of both children revealed that their father does not feature in their world. While Jesse has no difficulty with contact with his father, who buys him sweets, Jordan has an aversion to being with him in his

parents' home. She is intent on not eating non-kosher food and is anxious about being in a Christian environment.

[42] Jean has had very little contact with his children recently. While given supervised access to them in terms of a court order in 2012, he found that the costs of paying a social worker to supervise their visits to him were beyond his means. It had been agreed subsequently that he could see them under the supervision of his parents but Jordan was unhappy about visits. Neither he nor Pierre has contributed financially to the children's support in any significant way.

[43] Duchen consulted Jean in November 2014. At the time he was again in a drug rehabilitation centre. His addiction has continued for over 20 years. He views the children's upbringing as Jews negatively, and thinks that they have been indoctrinated. He is certainly unable to care for the children should De Villiers be incarcerated.

[44] The State, on the other hand, relying on the report of the family advocate, produced at the hearing of the appeal, argues that the children should be moved to the Arcadia Children's Home if De Villiers is incarcerated. While there they should be reintegrated into the De Villiers family and eventually live with their grandparents until her release.

[45] The reports on which the Family Advocate relies are dated and do not take into account Jean's constant addiction and the amount of time he spends in drug rehabilitation centres. An inspection of the children's home by them recently reassured the social workers that the home is well-run, that the children would be well-cared for and that their schooling would not be interrupted.

[46] I do not consider that the Family Advocate's recommendations, particularly that De Villliers should be deprived of guardianship of the children, are helpful. It is also unlikely, given their history with the paternal family, and the limited contact that they have had with them, that they would adjust eventually to living with that family. In my view, should we decide to sentence her to a period of imprisonment, De Villiers should be given the opportunity to decide herself who should take care of her children while she is incarcerated.

Evaluation of the proper sentence to be imposed on De Villiers

[47] Neither De Villiers nor the State asked that the matter be remitted to the trial court for the purpose of sentencing. In view of the lengthy delay between the trial and this appeal, it would be most undesirable to do so. Finality must be reached (see *Fraser v Naude & others* 1999 (1) SA 1 (CC) para 9). And in view of the new evidence that has been admitted by this court, we are in as good a position to consider an appropriate sentence as the trial court would have been.

[48] It remains to consider whether a sentence involving imprisonment is required in the circumstances. While considering the sentences imposed in similar cases is always useful, each person to be sentenced must be considered against her own background and in her own circumstances.

[49] In *S v M*, the appellant was a repeat offender, but had defrauded her employer of only some R29 000. De Villiers committed the offences over a short period, but the amount she took from her former employer's trust account is substantial. She has, however, paid back whatever she had personally gained, and has shown remorse. While testifying that she had been under the influence of her husband and his father, and had wanted to please them, and that she had not been medically treated for ADHD, as she now is, she nonetheless recognized that her conduct was not only morally wrong but also criminal. She accepts that she must be

punished for her wrongdoing. Her counsel argued strenuously for a non-custodial sentence, especially taking into account the interests of the children.

[50] The State, on the other hand, argues for a sentence in terms of s 276(1)*(i)* of the Act – a period of imprisonment from which De Villiers may be released under correctional supervision at the instance of the Commissioner. The purpose of correctional supervision without imprisonment is to ensure rehabilitation: De Villiers has already been rehabilitated so that purpose would not be met, it argued. I fail to see the logic in the argument, but accept the further argument advanced that the offences were serious, that a significant sum of money was in issue, and that De Villiers needs to be punished. The objects of deterrence and prevention must be met.

[51] I therefore consider that the fraud committed by De Villiers against her employer, when she was in a position of trust, is such that a custodial sentence is required. Society must be assured that persons who abuse positions of trust for their own gain are not allowed to walk free. At the same time, taking into account the best interests of De Villiers' very young children, the period of imprisonment should not be lengthy and should take into account the period for which she was incarcerated after her appeal to the full bench failed and before she was again released on bail. And she should be given an opportunity to make arrangements for their care and support before she is incarcerated.

[52] Accordingly:

1 The appeal is upheld.

2 The order of the court a quo is set aside and replaced with the following:

'The appeal is upheld:

The sentence imposed by the trial court is set aside and the following sentence is imposed:

The accused is sentenced, in terms of s 276(1)*(i)* of the Criminal Procedure Act 51 of 1977, to three years' imprisonment from which she may be placed under correctional supervision in the discretion of the Commissioner or a parole board.'

3 The sentence shall take effect four weeks from the date of this order.'

_____

C H Lewis

Judge of Appeal

APPEARANCES

For Appellant:	M Witz
Instructed by:	Witz, Calicchio, Isakow & Shapiro Inc Attorneys, Sandton Hugo & Bruwer Attorneys, Bloemfontein
For Respondents:	A Carstens
Instructed by:	National Director of Public Prosecutions, Johannesburg Director of Public Prosecutions, Bloemfontein
Amicus Curiae:	A Skelton
Instructed by:	Centre for Child Law, Pretoria Honey Attorneys, Bloemfontein