THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

REPORTABLE
CASE NO: 363/2005

In the matter between

THE DIRECTOR OF PUBLIC PROSECUTIONS KWAZULU-NATAL — **APPELLANT**

and

P — **RESPONDENT**

CORAM: **HARMS, STREICHER, MTHIYANE JJA, COMBRINCK and NKABINDE AJJA**

HEARD: **9 NOVEMBER 2005**
DELIVERED: **1 DECEMBER 2005**

Summary: **Sentence – appeal by state against sentence imposed on a 14 year old girl upon conviction for murder of her grandmother and theft – whether postponement of the passing of sentence coupled with 36 months of correctional supervision in terms of s 276(1)(h) of Act 51 of 1977 on certain conditions appropriate, given the severity of the offence – traditional and post-constitutional approach to sentencing with respect to a child offender (under 18 years old) considered. Appellate court's entitlement to interfere also considered.**

JUDGMENT

MTHIYANE JA:

MTHIYANE JA:

Introduction

[1] This is an appeal by the state, with the leave of this court, against the sentence imposed by Swain J, sitting in the High Court, Pietermaritzburg, in KwaZulu Natal, upon the conviction of P, a 14 year old girl (the accused), for the murder of her grandmother (the deceased) and theft. The passing of sentence was postponed for a period of 36 months on condition that the accused complies with the conditions of a sentence of 36 months of correctional supervision in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977. These conditions include provisions relating to house arrest, schooling, therapy, supervised probation, and the performance of community service.

The Facts

[2] During the evening of 14 September 2002, some time after 20:00, the accused, who was then 12 years and 5 months old, approached two men, Mr Vusumuzi Tshabalala and Mr Sipho Hadebe, who were under the influence of liquor, in the street in the vicinity of the house of the deceased and asked them to help her to kill her grandmother who, she alleged while crying, had killed both her parents. She promised that they

could remove whatever they wished from the house and even promised the one to have sexual relations with him in return for killing the deceased. They followed her into the house, where she again asked them to kill the deceased who was lying on a bed asleep. The accused had earlier placed sleeping tablets in tea that she had made for the deceased. The accused supplied them with kitchen knives. Hadebe strangled the deceased, resulting in her death, from what was described by the state pathologist, Dr Dhanraj Maney, in the post-mortem report as 'manual strangulation'. Not satisfied, the accused insisted that the throat be cut, which was done.

[3] The accused gave Tshabalala and Hadebe some jewellery and permitted them to take a video recorder, a satellite decoder and clothing in return for having murdered the deceased. Tshabalala and Hadebe were arrested and charged with the murder of the deceased, to which they both pleaded guilty on 2 October 2002 and were each sentenced to twenty five years' imprisonment.

[4] The accused's explanation for her participation in the killing was that she had done so on the instructions of an erstwhile boyfriend of the deceased's daughter, who offered her money to kill the deceased. Her evidence was that the plan how to kill the deceased had been hatched by

this person. Swain J rejected the accused's version and found that she had acted of her own volition, with no external coercion. On the evidence as a whole there is no reason to doubt the correctness of this finding. Despite the rejection of her version, the accused persisted in it to the end. To this day her motive for the murder is not known. After her father had committed suicide she chose out of her own will to live with the deceased in preference to living with her mother. The only motive one can surmise is the fact that the deceased and she had an argument about her relationship with a man of 20, whom she phoned, running up a telephone bill of about R2 000 during one month.

[5] On appeal the sentence was attacked by the state as being too lenient given the gravity of the offences committed by the accused. The state argued that the learned trial judge had failed to exercise his discretion properly and misdirected himself in a number of respects. It was submitted by counsel for the state that, given 'the compelling aggravating features peculiar to the murder', direct imprisonment should have been imposed upon the accused, notwithstanding her youth.

[6] In the view which I take of the matter I do not consider it necessary to deal with each argument raised in this regard. Suffice it to say that, having had regard to the evidence and the trial judge's assessment of it, I

am satisfied that the judge gave due and careful, if not anxious, consideration to the matter. I am not persuaded that, save in one material respect, he misdirected himself.

[7] The trial judge, in my view, did not approach the evidence of the witnesses dealing with sentence with the necessary degree of objectivity and accepted their say-so without considering whether they had a factual basis for their opinion. This caused him to place too much emphasis on the personal circumstances of the accused, under-emphasising the other material considerations. The evidence of Prof Sloth-Nielsen was in part inadmissible. Courts do not need professors of law to tell them what the law is or should be. The trial judge was especially taken in by the evidence of Mrs Joan van Niekerk who, without any factual basis, came to the conclusion that the accused's childhood had shaped her to commit the crimes in question. He also failed to consider that her evidence, as that of some of the others, was not objective and was based on what the accused had told them, while he knew (and they should have known) that the accused was a callous liar, prepared without compunction to concoct a version, create a false alibi and weave a web of falsehoods in order to implicate others. After the murder she was able for months on end to hide her complicity. This, according to the expert opinion of Mrs van Niekerk, was all due to the fact that her father had committed suicide, that the

relations between the deceased and her mother were bad, that the grandmother led a not exemplary life and that the accused hated her grandmother, ignoring the fact that her version to others was that she loved her.

[8] It might be the right opportunity to have regard again to the words of Rumpff CJ when he dealt with a related matter in *S v Loubscher*:[1]

‘In hierdie stadium moet gemeld word dat Dr Hayden, wat nie 'n psigiater of sielkundige is nie, 'n opinie uitgespreek het oor die waarskynlike verminderde toerekeningsvatbaarheid van die beskuldigde sonder dat hy enigsins sy opinie geknoop het aan die spesifieke feite van hierdie saak. Ook is dit opmerklik dat die deskundige getuies, wie se verklarings ek nog sal noem, versuim om dit te doen.’

‘Mens vra jouself af wat die waarde van hierdie "doppelgänger"-assumpsie [a theory advanced by the experts] is in die lig van die antwoord van die beskuldigde.’

‘Die deskundiges wat die verklarings gemaak het, weet baie goed, of behoort te weet, dat getuienis oor die geestestoestand van 'n beskuldigde, wat aan moord skuldig bevind is, alleen dan behoorlik oorweeg kan word wanneer die besonderhede van die moord in aanmerking geneem word. Hulle weet, of behoort te weet, dat 'n Hof nie staat kan maak op bewerings van 'n algemene aard wat nie in verband gebring word met die feite van die spesifieke geval nie.’

‘Indien die deskundiges die getuienis van die beskuldigde gelees het, soos dit hulle plig was om te doen, moes hulle tot die konklusie gekom het dat in die getuienis daar geen indikasie hoegenaamd was dat beskuldigde anders as 'n "normale"

[1] 1979 (3) SA 47 (A) at 57.

misdadiger opgetree het nie en dat uit die getuienis as 'n geheel geneem, en uit die pleeg van die daad self en die ander misdade, daar geen rede geblyk het nie waarom die beskuldigde as verminderd toerekeningsvatbaar beskou moes word.’

‘Die kritiek wat op die getuienis van die deskundiges in hierdie saak uitgespreek is, moet gesien word in die lig van die begeerte van die juris dat daar samewerking behoort te wees oor die probleem van toerekeningsvatbaarheid en aanspreeklikheid in verband met 'n misdaad tussen die juris aan die een kant, en die psigiater of die sielkundige of die neuroloog aan die ander kant, met erkenning van mekaar se grondliggende benadering en probleme.

Hierdie begeerte is reeds uitgespreek in 1967 in die Report of the Commission of Inquiry into the Responsibility of Mentally Deranged Persons and Related Matters. Ná verwysing na voorbeelde van sekere uiterste gevalle van onaanvaarbare opinies deur juriste en medici word die volgende gekonstateer in paras 1.19 en 1.20:

> "1.19. It is these extreme views which call for a coolheaded approach to the problems which are not to be evaded by the psychologist and the psychiatrist, on the one hand, and the jurist on the other, but must be solved by the co-operation of both parties in the best interests of society.
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> 1.20. What is required of the psychiatrist and the psychologist is a sense of responsibility towards the views of society and the purpose and essence of punishment, and what is required of the jurist and the public is appreciation for the development of psychiatric and psychological knowledge."

Hiervolgens rus daar 'n plig op die juris sowel as op die geestesdeskundige en dit is die plig van 'n geestesdeskundige om in 'n strafsaak nie slegs algemene opinies uit te spreek nie, wat miskien op mediese gebied as verantwoord beskou kan word,

maar om sy opinies te lewer met behoorlike inagneming van wat die taak van 'n verhoorhof is by die toepassing van die strafreg en veral by die oorweging van toerekeningsvatbaarheid en strafregtelike aanspreeklikheid.'

[9] The accused, in my view, and in spite of her age and background, acted like an 'ordinary' criminal and should have been treated as such. She had no mental abnormalities and, something the judge had noted, was able to pass herself off and in many respects acted like someone of about 18 years of age. That is what at least one witness thought her age was. All the guesswork about her mental and physical age in contradistinction to her actual age pales into insignificance.

[10] That is, however, not the end of the matter. What troubles, is whether the sentence (if postponement of sentence can be regarded as a sentence) imposed was appropriate in the circumstances of this case. The test for interference by an appeal court is whether the sentence imposed by the trial court is vitiated by irregularity or misdirection or is disturbingly inappropriate. (See *S v Rabie*)[2]. Even in the absence of misdirection, it would still be competent for this court to interfere if it

[2] 1975 (4) SA 855 (A) at 857D-F; See also *S v Pillay* 1977 (4) SA 531 (A); *S v Pieters* 1987 (3) SA 717 (A); *S v Sadler* 2000 (1) SACR 331 (SCA); *S v Salzwedel and Others* 1999 (2) SACR 586 (SCA).

were satisfied that the trial court had not exercised its discretion reasonably[3] and imposed a sentence which was not appropriate.

The Issue on Appeal

[11] In my view the issue on appeal can therefore be narrowed down to whether the sentence imposed by the trial court was appropriate, given that court's duty to have regard to the seriousness of the offence and the interests of society as well as the true character of the accused. This issue must of course now be considered not only with reference to the so-called traditional approach to sentencing but also with due regard to the sentencing regime foreshadowed in s 28 (1) (g) of the Constitution and international developments as reflected in, for instance, instruments issued under the aegis of the United Nations.

[12] There can be no question that at the best of times the sentencing of a juvenile offender is never easy and is far more complex than the sentencing of an adult offender (*S v Ruiters*[4]; SS Terblanche *The Guide to Sentencing in South Africa* (1999)[5]). It is even worse if the youthful offender concerned is a child,[6] as in this case. As pointed out in *Brandt v*

[3] *S v Pieters* at 734H.
[4] 1975 (3) SA 526 (C) at 531E-F.
[5] (1999) ch 12 375.
[6] Section 28 (3) states: 'child' means a person under the age 18 years.

S[7] our criminal justice system has never treated the sentencing of a child offender as a 'separate, self contained and compartmentalised' field of judicial activity. The youth of the offender has, however, always been recognised at common law as a mitigating factor for purposes of sentence. (*S v Jansen*;[8] *S v Lehnberg en`n ander*[9])

The Traditional Approach

[13] The so-called traditional approach to sentencing required (and still does) the sentencing court to consider the 'triad consisting of the crime, the offender and the interests of society' (*S v Zinn*[10]). In the assessment of an appropriate sentence, the court is required to have regard to the main purposes of punishment namely, the deterrent, preventive, reformative and the retributive aspects thereof (*S v Khumalo*[11]). To these elements must be added the quality of mercy,[12] as distinct from mere sympathy for the offender. As noted by this court in *Brandt* 'the traditional aims of punishment have been affected by the Constitution'.

The Constitution and the International Instruments

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[7] [2005] 2 All SA 1 (SCA) at para 14.
[8] 1975 (1) SA 425 (A).
[9] 1975 (4) SA 553 (A).
[10] 1969 (2) SA 537 (A) at 540G.
[11] 1984 (3) SA 327 (A) at 330D.
[12] *S v Rabie* supra at 861D-F and 866A-C.

[14] With the advent of the Constitution the principles of sentencing which underpinned the traditional approach must, where a child offender is concerned, be adapted and applied to fit in with the sentencing regime enshrined in the Constitution, and in keeping with the international instruments which lay 'emphasis on *reintegration* of the child into society'.[13] The general principle governing the sentencing of juvenile offenders is set out in s 28 (1) (g) of the Constitution. The section reads:

'Every child has the right –

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –

(i) kept separately from detained persons over the age of 18 years; and

(ii) treated in a manner, and kept in conditions, that take account of the child's age; . . .'

[15] Section 28 has its origins in the international instruments of the United Nations. Of relevance to this case is the United Nations Convention on the Rights of the Child (1989) which South Africa ratified on 16 June 1995[14] and thereby assumed an obligation under International Law to incorporate it into its domestic law.[15] Various articles under the convention provide that juvenile offenders under the age of 18 years

[13] Report on Juvenile Justice (Project 106) at 150.
[14] In South Africa the 16 June is recognized as Children's Day and is a public holiday.
[15] *S v Kwalase* 2000 (2) SACR 135 (C) at 138g.

'should as far as possible be dealt with by the criminal justice system in a manner that takes into account their age and special needs.'[16] Also of relevance is article 40 (1) of the Convention which recognizes the right of the child offender 'to be treated in a manner consistent with the promotion of a child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedom of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'[17] Section 28 (1) (g) of our Constitution appears to be a replica of s 37 (b) of the Convention which provides that children in conflict with the law must be arrested, detained or imprisoned 'only as a matter of last resort and for the shortest appropriate period of time.'[18]

[16] The Convention has to be considered in conjunction with other international instruments. Most of these instruments are referred to extensively in *Brandt.*[19] Of particular relevance in this case, however, is the United Nations *Standard Minimum Rules for the Administration of Juvenile Justi*ce (1985) ('Beijing Rules'), in particular rule 5 (1). The rule recommends that a criminal justice system should 'ensure that any reaction to juvenile offenders shall always be in proportion to the

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[16] *S v Kwalase* at 138g.
[17] *S v Kwalase* at 138g.
[18] *S v Kwalase* at 138i.
[19] Para 16.

circumstances of both the offender and the offence'.[20] The rule should, however, not be read in isolation because rule 17 (1) (a) provides that:

'The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as the needs of society'

The commentary notes that it is difficult to formulate guidelines because of the unresolved conflicts of a philosophical nature including rehabilitation versus just deserts, assistance versus repression and punishment, merits of the case versus protection of society in general and general deterrence versus individual incapacitation.

The South African Law Commission

[17] In July 2000 the South African Law Commission Project Committee on Juvenile Justice (Project 106) released a Discussion Paper embodying a draft Child Justice Bill. On the sentencing of child offenders there is unqualified support for the principle that 'detention should be a matter of last resort.'[21] It also recommended that 'the sentence of imprisonment for children below a certain age (14) years be excluded.' Following the Beijing Rules, in particular rule 17 (1) (c) thereof the committee recommended that imprisonment should only be imposed

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[20] *S v Kwalase* at 139c-e.
[21] S A Law Commission Report on Juvenile Justice (Project 106) 153 footnote 16.

upon children who have been convicted of serious and violent offences.[22] These recommendations have not as yet been adopted by Parliament and can have but peripheral value at this stage.

[18] Having regard to s 28 (1) (g) of the Constitution and the relevant international instruments, as already indicated, it is clear that in every case involving a juvenile offender, the ambit and scope of sentencing will have to be widened in order to give effect to the principle that a child offender is 'not to be detained except, as a measure of last resort' and if detention of a child is unavoidable, this should be 'only for the shortest appropriate period of time'. This of course applies to a juvenile offender who is under the age of 18 years as provided for in s 28 (1) (g) of the Constitution. Furthermore if the juvenile concerned is a child as described, he or she should be kept separately from persons over the age of 18 years and the sentencing court will have to give directions to this effect, if it considers that the case before it warrants detention. This follows from s 28 (2) of the Constitution which provides that a child's best interests are of paramount importance in every matter concerning the child.

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[22] *Op cit.*

[19] It must be remembered that the Constitution and the international instruments do not forbid incarceration of children in certain circumstances. All that it requires is that the 'child be detained only for the shortest period of time' and that the child be 'kept separately from detained persons over the age of 18 years.' It is not inconceivable that some of the courts may be confronted with cases which require detention. It happened in the United Kingdom not so long ago in the case of *R v Secretary of State for the Home Department, ex parte Venables*; *R v Secretary of State for the Home Department, ex parte Thompson*[23] where two boys aged ten were convicted of the murder of a two year old boy in appalling circumstances. Leaving aside the details relating to the appeal processes, they were sentenced to ten years.

[20] I turn now to consider the facts relevant to the sentence of the accused. The strongest mitigating factor in favour of the accused is her youthfulness: she was 12 years and 5 months' old at the time of the offence. A second most important factor is that she has no previous conviction. This is an important factor because even the Beijing rules (rule 17 (1) (c)) provide for incarceration of a child who has committed 'a serious violent act against another person and or persists in committing

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[23] [1997] All ER 97.

other serious offences'[24] albeit as a measure of last resort and for the shortest period of time.

[21] As against the above mitigating factors (to which of course her personal circumstances must be included) are the aggravating features of the case which prompted the trial judge to remark that if he were to look only at the gravity of the offence committed by the accused, there was no doubt that the imprisonment of the accused might be regarded as the only appropriate punishment. The accused arranged for the brutal murder of her grandmother at the hands of two strangers who now languish in prison, each serving sentences of imprisonment of twenty five years. The killing was particularly gruesome: the deceased had her throat cut in her bedroom and was slaughtered like an animal. The accused provided the killers with knives. She stood watching while the killers carried out her evil command and even callously allowed her 6 year old brother to enter the room when her sordid mission had been accomplished. Mercifully, the deceased was unaware of what was happening because the accused had drugged her by putting sleeping tablets in her tea. The murder was premeditated. One would expect a person of that age to have been remorseful. Not the accused. While the killers were still in the house after the murder she telephoned her boyfriend – a twenty year old – to try and

[24] *Op cit* footnote 16.

fabricate an alibi. As if that was not bad enough she rewarded the killers with a number of household goods belonging to the deceased, as indicated earlier in the judgment. One can go on and on. Every chapter of this sordid tale reveals the evil mindedness of the accused. One of the more worrying aspects of the case is that no motive was given for the killing, which makes it imperative for this court to consider a sentence that would to some extent ensure that those who come into contact with her are protected.

[22] Although Swain J gave anxious consideration to the matter, I agree with counsel for the state that he failed to have sufficient regard to the gravity of the offence. The postponement of the passing of sentence even when coupled with correctional supervision was, in my view, inappropriate in the circumstances and leaves one with a sense of shock and a feeling that justice was not done. Even in the case of a juvenile as already indicated the sentence imposed must be in proportion to the gravity of the offence. If this case does not call for imprisonment of a child, I cannot conceive of one that will. Admittedly in his judgment the learned judge did allude to the principle of proportionality but, I believe, he failed to give due and sufficient weight to it, and this court is therefore at large to interfere and impose what it considers to be an appropriate

sentence. In *Brandt*[25] and *Kwalase*[26] the court reiterated that proportionality in sentencing juvenile offenders was required by the Constitution. Of course proportionality in sentencing is not meant to be in the sense of an 'eye for an eye' as was cautioned by Harms AJA in a dissenting judgment in *S v Mafu*[27] where he noted that proportionality does not imply that punishment be equal in kind to the harm that the offender has caused.

[23] If I had been a judge of first instance I would have seriously considered imposing a sentence of imprisonment. The court below was very concerned about the accused's reintegration into society should she be sent to prison. It is a valid concern but the fact that she could not study what she wishes and that the schooling facilities are not ideal, are in my view factors of limited value. The present case is, however, far from simple. We know that the Department of Correctional Services, in detaining children, does not comply with either the Constitution or the provisions of its Act. There is also no indication that, in this case, it would. There appears to be a general unwillingness to accept the fact that there are children that have to be detained in prison-like facilities, and there are none for their purposes. All the other detention options are as

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[25] At para 19.
[26] At 139f.
[27] 1992 (2) SACR 494 (A) at 497d.

bad or non-existent. The court below was told that there is some kind of provincial facility in the Western Cape but it will not accept children from other provinces unless those are prepared to pay, which the relevant province apparently cannot or will not.

[24] Although prison conditions are generally not a matter with which a sentencing court should concern itself – since it is a matter for the government, the Ministry of Correctional Services and the Prison authorities to rectify – and although it is not for the sentencing court to first undertake an investigation as to whether there is accommodation available in prison for a juvenile offender each time it considers passing a custodial sentence, we cannot close our eyes to the facts as we know them.

[25] In spite of my reservations about the duty of a sentencing court to investigate prison conditions and the like, I have to refer to the fact that the witnesses from Correctional Services misled the court below. When correctional supervision was introduced, courts embraced it enthusiastically as a real sentencing option, something that will have a substantial effect on the prison population in this country. As time went on courts became more sceptical but I am now completely disillusioned. We asked for a report from Correctional Services to determine the nature

and scope of their supervision since the judge had requested that the accused should be visited at least four times per week at irregular intervals. Without proper supervision house arrest has no value. The affidavit indicates that although the accused was sentenced on 17 December 2004, there were no visits during the festive season, in January there were 9, in February 3, in March 2, then one per month and, suddenly when the appeal was enrolled, there were 6 during October. Although a telephone had been installed, there were six telephone contacts in all. More disturbing is the fact that the visits and contacts were all during office hours, leaving the accused free to do what she wishes after hours and during week-ends. We have invited counsel for the state to provide us with proposals of how to make the house arrest effective, but they have failed to file any suggestions. However, one cannot fault the trial judge for having imposed this sentence, carefully crafted as he did, and it has to stand subject to minor amendments that speak for themselves.

[26] It is the postponement of sentence that has to be reconsidered. It is too late to impose a sentence of direct imprisonment but the interests of justice will be served by imposing a term of imprisonment but suspending it on certain conditions, which if breached might result in the accused having to serve time in prison. In this way, I believe, recognition will be

given to the interests of society in the sense that it would be protected against her, and she against society, which might wish to seek revenge.

[27] Since the state was substantially successful, the accused is not entitled to an award of costs.

[28] In the result the appeal is allowed. The sentence imposed by the trial court is replaced with the following:

'The accused is sentenced to:

1. Seven years' imprisonment, the whole of which is suspended for 5 years on condition that the accused is not again convicted of an offence of which violence is an element, committed during the period of suspension and for which she is sentenced to a term of imprisonment without the option of a fine.

2. Thirty-six months of correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act on the following conditions:

   (a) that she be placed under house arrest, in the care and custody of her mother and legal guardian for the duration of thirty-six months, on the conditions set out below;

(b) that she be confined to the flat occupied by her mother save and except in the following circumstances:

(i) that she attend school during ‘normal school hours’. For these purposes ‘normal school hours’ means one (1) hour prior to the commencement of school and one (1) hour after the conclusion of school, for the purpose of travelling to and from school;

(ii) that she attend official school activities falling outside of ‘normal school hours’ as sanctioned by the principal of the school;

(iii) that she attend the NICRO program known as ‘Journey’, other life skills training and therapeutic courses, activities or counselling as prescribed by Mrs Joan van Niekerk and/or the correctional officer;

(iv) that she receive medical and/or dental treatment as determined by a medical doctor or dentist;

(v) that she be in the building of which the flat forms a part, but outside the confines of the flat itself for one hour between 16:00 and 17:00 during school term, and for two (2) hours in

total respectively between 10:00 and 11:00 and between 15:00 and 16:00 during school holidays;

(c) that she receive regular support therapy from Mrs Joan van Niekerk, or any other suitable professional designated by her, and that she co-operate fully in receiving such therapy;

(d) that she render one hundred and twenty (120) hours per year of community service, as approved by Mrs Joan van Niekerk and the correctional officer, in addition to her school curriculum activities, when she attains fifteen (15) years of age;

(e) that she be permitted visitors at the flat where she lives, as approved by the accused's mother and Mrs Joan van Niekerk, only in the presence of her mother;

(f) Mrs Joan van Niekerk or the correctional officer are requested to submit quarterly reports to the Director of Public Prosecutions, briefly setting out the progress being made by the accused and the general compliance by the accused with the terms of this order;

(g) that correctional officer is ordered to visit the flat where the accused will be living at least four times per month, including weekends and after office hours, at irregular intervals to ensure compliance by the accused with the terms of her confinement. The correctional officer is also ordered to telephone the accused, once a telephone has been installed in the flat, at irregular intervals and after hours to ensure compliance by the accused;

(h) the Director of Public Prosecutions, Mrs Joan van Niekerk and/or the correctional officer, are given leave to approach this Court at any time, for a variation of the terms of this order;

(i) In the event of any breach by the accused of any of these conditions, the correctional officer is directed to immediately report such breach on affidavit to the Director of Public Prosecutions who may then apply for the necessary relief.'

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KK MTHIYANE
JUDGE OF APPEAL

CONCUR:

HARMS JA
STREICHER JA
COMBRINCK AJA
NKABINDE AJA