IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: AR346/15

In the matter between:

THE STATE Appellant

and

[redacted] Respondent

REVIEW JUDGMENT

Date delivered: 28 June 2016

CHETTY J

[1] This matter concerns the interpretation of the provisions of the Child Justice Act[1] ('the CJA') in circumstances where a child offender, [redacted], is alleged to have committed assault with the intent to do grievous bodily harm following the stabbing of [redacted] ('the complainant'), with a knife. The offender, a female scholar, was 17 years old at the time of the offence. The offender admitted responsibility for the offence and after a preliminary inquiry, the presiding magistrate ordered a diversion in terms of the CJA. It is not in dispute that the offence for which the offender was charged was serious and was properly categorised and dealt with by the court a quo as a Schedule 2 offence in terms of the CJA. The offender was

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[1] 75 of 2008.

assessed by a probation officer, after which a further assessment was conducted by the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO). On 17 March 2015 the presiding magistrate granted a diversion order which, as far as can be ascertained from the record of the proceedings in the court a quo, was made in the following terms:

(i) a "family time order";

(ii) "referral to counsel or therapy"; and

(iii) "community service under the supervision and control of an organisation or institution, or a specified person, persons or group of persons identified by the probation officer".

[2] The above order was purportedly made in accordance with the diversion options applicable to Schedule 2 offences, in terms of s 53(3) of the CJA. The cover sheet of the preliminary enquiry records that the return date in respect of the diversion order was set as 17 September 2015. This court is unaware of what transpired on the return date, however the Director of Public Prosecutions ('the DPP'), as the party who initiated these proceedings, accepted in its replying submissions that 'because of the effluxion of time the child offender has successfully completed the diversion'.

[3] The review application brought by the DPP was done in terms of s 304(4) of the Criminal Procedure Act[2] ('the CPA') as it contends that the subject matter of the review falls outside reviews in the ordinary course in terms of s 302 of the CPA. The DPP contends that the diversion order sanctioned by the presiding magistrate was an incompetent order and that the preliminary inquiry was conducted in a manner which was procedurally irregular. The DPP recommended that in light of these irregularities, the diversion order be set aside and the matter be remitted to commence de novo before another magistrate.

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[2] 51 of 1977.

[4] The application for review was filed in this court on 25 June 2015. It is not clear what precipitated the review, as it will be noted later in this judgment, and there is no averment from the DPP that the alleged irregularities have caused prejudice to either the offender or the complainant. *Ex facie* the application, several technical deficiencies or 'irregularities' were raised as to the procedure followed by the presiding magistrate at the preliminary inquiry as well as the content of the diversion order. After a consideration of the issues raised by the DPP, I mero motu requested the Centre for Child Law ('the CCL') to consider the application and to make submissions to this court as amicus curiae. This request was deemed necessary, in part, because the review application by the DPP contained no indication that the application had been served on the magistrate whose diversion order was being challenged, nor was it served on the child offender, in respect of whom the DPP seeks to bring again before the courts, despite their concession that she has in all probability successfully completed the diversion program. There was also no indication that the complainant had been advised that the matter had been taken on review. In the event that I were to order the deviation order be set aside, both the child offender and the complainant would then find themselves before the criminal justice system, without any input from them as to whether they would want to go through the process again. I am indebted to the CCL for their most helpful submissions, which in the true sense of an amicus, support the views advanced by the DPP in some respects and in others, oppose its arguments. The submissions were duly forwarded to the DPP for its response. Despite several letters requesting a response, no submissions were forthcoming. Only after personally bringing this matter to the attention of the senior advocate dealing with the matter, was a response filed with this court on 1 April 2106. No explanation was tendered for the delay. The resultant delay in receiving a response from the DPP influences the nature of the relief granted, although it is not entirely attributable thereto. In any event, I would be remiss in pointing out that the delay ought not to detract from the very thorough submissions made by counsel on behalf of the DPP.

[5] The facts of the matter, which are not in dispute, are that on or about 25 December 2014 the offender allegedly stabbed the complainant with a knife. The offender was brought to the "Plessislaer" Police Station for processing on 7 March

2015. She was released into the care of her father, pursuant to a written notice to appear at a preliminary inquiry on 9 March 2015. On 9 March 2015 the offender appeared, together with her guardian, at her preliminary inquiry held in Pietermaritzburg. The matter was postponed to 12 March 2015 to enable a probation officer's assessment to be compiled. The offender was released into the custody of her guardian.

[6] On 12 March 2015 a report prepared by a probation officer was submitted to the court. The manuscript notes of the magistrate records that the "*PO Report present + favourable. Acc admits responsibility*". The objectives of diversion are dealt with in Chapter 8 of the CJA and are essentially to deal with a child outside the formal criminal justice system in appropriate cases; to encourage the child to be accountable for any harm caused, promote reconciliation, rehabilitation and the restoration of the child back into his or her family and community. In the context of young offenders, those diverted in terms of the CJA avoid the stigma of having a criminal record attached to them. In terms of s 52(1)(a) of the CJA, in considering a diversion, it is required that all relevant information be presented at a preliminary inquiry, including whether the child has a record of previous diversions, and whether the child acknowledges responsibility for the offence and has not been unduly influenced to acknowledge responsibility. In addition, there must be a *prima facie* case against the child. If available, the child's parent or guardian must also be required to consent to the diversion.

[7] The matter was postponed until 17 March 2015 in order to allow NICRO to complete an assessment. The offender was released into the care of her guardian. On 17 March 2015 the manuscript notes to the cover sheet of the preliminary enquiry reflect that a diversion order was made in the following terms: (i) a "*family time order*"; (ii) "*referral to counsel or therapy*"; and (iii) "*community service under the supervision and control of an organisation or institution, or a specified person, persons or group of persons identified by the probation officer*". The diversion order, for the sake of completeness and in the absence of a transcript of the proceedings, must be read together with a form completed on 17 March 2015 in which NICRO is specified as the diversion service provider identified by the probation officer in the event of a diversion order being made.

[8] The DPP challenges the proceedings in the court a quo as not being in accordance with justice on two main grounds; firstly that the diversion order was incompetent, and secondly that the preliminary inquiry was procedurally irregular. In dealing with the first ground of contention, the DPP contends that the diversion is cursory and does not meet the standard required, that no probation officer or other suitable person was identified to monitor whether the child has complied with the deviation order; and there is uncertainty as to whether a level 1 or level 2 diversion has been chosen. As regards the preliminary inquiry, the DPP contends that this proceeding was irregular in that the offender's attendance at the inquiry was secured by the incorrect method; that the provisions of ss 47, 48(1) and 48(2) of the CJA were not complied with and that the child's parent, from what appears on the court record, did not participate in the proceedings. It is further contended that the requirements of diversion as set out in s 52(1) of the CJA were not complied with and that the views of the complainant were not considered by the prosecutor when embarking on the diversion of a Schedule 2 offence.

[9] As indicated earlier, the difficulty in dealing with many of the alleged irregularities alluded to by the DPP call for conclusions to be drawn from a record that is terse and in respect of proceedings that have been conducted with a great degree of informality. This court is therefore bound by the record, as it is. It is unhelpful in such circumstances to draw inferences from facts not contained in the record. However, as these are review proceedings as opposed to an appeal, facts other than those which appear on the record may form part of the grounds for review. However, grounds of review should not be speculative, based on hypothesis where no factual basis exists for them to be drawn. On the aspect of whether inferences may be drawn from the record, the CCL expressed concern with such an approach, as neither the offender nor the presiding magistrate in the preliminary inquiry have been cited as parties to the application, and therefore have had no opportunity to respond to any allegations made against them.

[10] As noted earlier the DPP has brought this application in terms of s 304(4) of the CPA which states that:

> 'If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section.'

[11] It was submitted by the DPP that the procedure in s 304(4) is extraordinary in that it allows for the review of matters not otherwise subject to review or appeal in the ordinary course. In practice, the procedure contemplated in s 304 is often utilised by magistrates in instances where they have doubt regarding the correctness of a conviction or sentence, but are functus officio to alter their decisions.[3] It is, albeit to a lesser extent, also utilised by prosecutors and attorneys in instances where, but for the provision, a miscarriage of justice would result.[4] In s 304 review applications, the ultimate consideration is not whether there was strict adherence to the law, but rather that real and substantial justice must be achieved.[5]

[12] The CCL submitted that the procedure used by the DPP in bringing the review application is impermissible and contends that s 304(4) stipulates that the procedure of special review ought to only be utilised once a magistrates' court or regional court has imposed a sentence[6] or where a grave injustice might otherwise result, or where justice cannot be attained by other means.[7] It is not in dispute that the offender was not convicted or sentenced. Instead, in accordance with the provisions of the CJA, she was diverted away from the criminal justice system, recognised as an important

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[3] See *S v Botha* 1978 (4) SA 543 (T); *S v Hoema* 1978 (2) SA 703 (T) and *S v Kubheka* 1999 (1) SACR 65 (W).

[4] See for example *S v Eli* 1978 (1) SA 451 (E) and *S v Monchanyana* 1968 (1) SA 56 (O).

[5] See *R v Harmer* 1906 TS 50 at 51; *S v Zulu* 1967 (4) SA 499 (T) at 502 and *S v Ndlovu* 1998 (1) SACR 599 (W).

[6] See *S v April* 1985 (1) SA 639 (NC); *S v Shezi* 1984 (2) SA 577 (N); and *S v Williams* 2005 (2) SACR 290 (C).

[7] See *S v Burns & another* 1988 (3) SA 366 (C); *Ismail v Additional Magistrate, Wynberg* 1963 (1) SA 1 (A).

step in the protection of children who are in conflict with the law. Accordingly, a prerequisite for the resort to s 304(4) – or what the CCL refers to as the 'gateway' requirement of this section - being that a sentence must have been imposed, does not exist in the present matter.

[13] At the same time, it is submitted that no case has been made out by the DPP that a "diversion" in terms of the CJA is the same or substantially the same as a sentence imposed in the ordinary course of the criminal justice system. "Diversion" in s 1 of the CJA means 'diversion of a matter involving a child away from the formal court procedures in a criminal matter by means of the procedures established by Chapter 6 and Chapter 8'. It is further contended that whether one considers the irregularities complained of by the DPP either individually or collectively, they are not of such magnitude that they amount to a failure of justice. In *S v Nteleki* 2009 (2) SACR 323 (O) para 7 the court noted that s 304 requires a judge to certify that the proceedings are in accordance with justice. It does not require the judge to certify that the proceedings are in accordance with strict law.[8] In assessing whether this standard has been met, the court's overarching role is to ensure that justice is done both to the accused and the state.[9]

[14] In light of these apparent flaws in the DPP's application, the CCL submit that the application should, on this basis alone, be dismissed. At the same time the CCL recognises that these preliminary points directed at the interpretation of s 304(4) are technical objections, and their role as amicus is to place all relevant information before the court. The DPP adopts the view that it should be entitled to bring "any irregularity" to the High Court, which may require correction. Whether the irregularity is of such a nature that it vitiates the proceedings is another matter.

[15] I do not agree with the reasons advanced by the DPP as to why this court should be seized with this application, such having been brought in terms of s

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[8] See *S v Zulu* 1967 (4) SA 499 (T) at 502D-F.
[9] Ibid at 501G.

304(4). However, to dismiss the application on this basis alone would not be in the interests of justice as the DPP have raised pertinent concerns as to the procedure followed in the magistrate's court in dealing with a child in conflict with law. When considering a matter such as this, the court must hold the best interests of the child as paramount. At the same time, other interests should not be construed as being unimportant. In determining whether s 304(4) permits the DPP to review proceedings where a diversion order has been made, and where it is conceded that the child offender was not prejudiced in the context of the proceedings in the lower court, one must interpret the section in a "sensible" manner.[10] One must have regard to the purpose to which the provision is directed. Viewed in that context, where a diversion order is made and accepting that no conviction or sentence exists where a child offender is diverted in terms of the CJA, if the DPP wishes to challenge a procedural irregularity which occurred in the course of arriving at the diversion order, what other provision exists for doing so apart from s 304?

[16] I am accordingly of the view that even though the offender was not sentenced, as contemplated in s 304(4), one must adopt a wider rather than a narrow approach in determining the role of the superior courts in overseeing the conduct of proceedings in the lower courts. A similar approach was endorsed in *S v Zondi* 2012 (2) SACR 445 (KZP) where the Court noted the provisions of Section 19(1)*(a)*(ii) of the old Supreme Court Act gave the High Court the power to review the proceedings of all inferior courts within its area of jurisdiction. The grounds of review included those in terms of s 24(c) where there had been a gross irregularity in the proceedings. In considering the test to be employed in a review application, the Court at para [9] held that

> "It is noteworthy that the same test applies in a review in terms of ss 302 and 304 of the CPA. The test is not whether there was an irregularity or some other traditional ground of review. It is simply whether or not the court is of the view that the proceedings are in accordance with justice."

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[10] See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) and *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA).

As Cameron JA said in *Magistrate, Stutterheim v Mashiya* 2004 (5) SA 209 (SCA) para 12, one must deal with the "substance of the order and not the technicalities of its provenance". Cameron JA went on to point out in para 13 that

> "That the higher Courts have supervisory power over the conduct of proceedings in the magistrates' courts in both civil and criminal matters is beyond doubt. This includes the power to intervene in unconcluded proceedings. This Court confirmed more than four decades ago that the jurisdiction exists at common law. It subsists under the Constitution, which creates a hierarchical court structure that distinguishes between superior and inferior courts by giving the former but not the latter jurisdiction to rule on the constitutionality of legislation and presidential conduct as well as inherent power. The Constitutional Court has emphasised the role of the higher Courts in ensuring 'quality control' in the magistrates' courts, and the importance of the High Court's judicial supervision of the lower courts in reviewing and correcting mistakes. This entails, as Chaskalson CJ has observed, that the higher Courts can 'supervise the manner in which' the lower courts discharge their functions. His general formulation echoes the provisions of the Criminal Procedure Act, which provides that in criminal proceedings subject to review in the ordinary course the High Court may, amongst many ample powers, 'remit the case to the magistrate's court with instructions to deal with any matter in such manner as' it may think fit. (footnotes omitted)

Even if the proceedings in the lower court are "unconcluded" and a where a "grave injustice threatens", I can only endorse the views of Cameron JA that an intervention by the high court would be necessary to ensure that justice is attained. For these reasons, I am of the view that a formalistic approach to the instances when s 304 may be employed is to be eschewed, particularly when the interests of a child in conflict with the law are concerned.

[17] While accepting that s 304(4) does not contain any specific procedure for reviews to be brought, the CCL contend that the DPP's election to bring the application on an *ex parte* basis renders it deficient, particularly as neither the offender nor her guardian were cited as parties in the litigation. In *J v Director of Public Prosecutions & others* 2014 (2) SACR 1 (CC) para 40 the Constitutional Court noted the child's right to participate in all criminal proceedings, and that:

> '...the child or her representative must be afforded an appropriate and adequate opportunity to make representations and to be heard at every stage of the justice process, giving due weight to the age and maturity of the child. This is also accommodated in the guiding principles under the Child Justice Act, which provide in section 3(c) that "every child should, as far as possible, be given an opportunity to participate in any proceedings ... where decisions affecting him or her might be taken".'

[18] Apart from a failure to comply with the constitutional injunction to consider the child's best interest in every matter concerning a child, the failure to involve the child or her guardian infringes the right of audi alteram partem. In addition, the failure to cite the presiding magistrate deprives this court of the views of the magistrate, particularly in the face of the various irregularities alleged. The failure to cite the magistrate as a party is rendered more serious in light of the paucity of information contained in the record of proceedings at the preliminary inquiry and in the lead up to the diversion order being made.

[19] I am in agreement with the submissions of the CCL that the procedure followed by the DPP was fundamentally flawed and cannot be condoned. It is noteworthy that the DPP, despite being afforded the opportunity to make submissions in reply, elected not to contest this argument of the amicus. I am in agreement that for the reasons set out above, the review application must fail.

[20] I now turn to deal with the DPP's contentions that the diversion order was incompetent. It submits that the diversion order is void for vagueness and that the use of Form 6 in an "indiscriminate manner" may result in a level 1 diversion option being used for a Schedule 2 offence. It further contends that as the offence of assault with intent to do grievous bodily harm is a Schedule 2 offence, no level 2 diversion option can be used in combination with the diversion options set out in s 53(3)(c)-(f) of the CJA. It is also not in dispute that the offender was assessed by NICRO and ordered to carry out a diversion programme in terms of s 53(1)(f) with the offender being placed under the supervision and guidance of a mentor in order to monitor and guide the child's behaviour. The record indicates that a social worker

would monitor the child. The DPP points out that NICRO offers two programmes designed to offer therapeutic treatment to offenders – the Youth Empowerment Scheme (YES) and the Adolescent Drug Abuse and Prevention Treatment Programme (ADAPT). It contends that the failure of the magistrate to indicate which specific programme the offender was to undergo was considered an irregularity. The same argument is advanced with regard to the magistrate's failure to clarify the specific type of community service which the offender was ordered to undergo; its duration and the name of the person or organisation to oversee supervision of the offender. There can be no opposition to the DPP's argument that there should be greater clarity when setting out diversion orders as it provides certainty to all parties concerned as to their responsibilities, particularly when non-compliance is raised on the day when the offender returns to report to court . The DPP further submitted that it is not clear from the diversion order whether it was a level 1 or level 2 diversion.

[21] I am in agreement with the DPP that greater care should be taken by magistrates in articulating the terms of the diversion so as to ensure that the offender, any supervisor appointed to a diversion program and any of the other role players in the diversion, are aware at all times of what is required of them. The CCL point out that greater particularity in diversion orders also prevents children being held to an unreasonable standard of compliance by a probation officer or diversion service provider. It is equally important that the complainant in the matter be apprised of the terms of the order so that she or he can appreciate that the order is designed to reform and rehabilitate the offender and steer the offender away from any future criminal conduct. Where this is lacking, it erodes confidence that complainants may have in accepting the legitimacy of the diversion system. This must be avoided.

[22] The CCL submits that the irregularities contended for are not so severe so as to warrant the setting aside of the diversion order. Equally important is that the DPP has accepted that the child offender has, in all probability, successfully completed the diversion programme. Accepting the criticism pointed out by the DPP with regard to the lack of specificity of the terms of the diversion order, the CCL contends that there is nothing objectionable in the type of programme the child was ordered to

attend and that in respect of the diversion options that may be ordered, s 53(4) of the CJA read together with s 54(2)(b) provides that:

> 'In the case of an offence referred to in Schedule 2 or 3, level two diversion options set out in section 53(4) are applicable and may be used in combination, together with any one or more level one diversion options, where appropriate'.

[23] In so far as the diversion option and the programme to be supervised by NICRO, there is nothing on record to suggest that the offender was unaware of the terms of the order or that she neglected in one way or another in complying therewith. In sum, the CCL submit that whatever imperfections exist in the terms and conditions of the diversion order and its lack of particularity, these do not warrant the setting aside of the diversion order. The defects are of a technical nature. In this regard, the CCL rely on the view articulated by Sachs J in *AD & another v DW & others (Centre for Child Law as Amicus Curiae; Department for Social Development as Intervening Party)* 2008 (3) SA 183 (CC) para 55 that:

> 'Child law is an area that abhors maximalist legal propositions that preclude or diminish the possibilities of looking at and evaluating the specific circumstances of the case. ... This means that each child must be looked at as an individual, not as an abstraction. It also means that unduly rigid adherence to technical matters, such as who bears the onus of proof, should play a relatively diminished role; the courts are essentially guarding the best interests of a child, not simply settling a dispute between litigants.'

[24] The DDP further submitted that the method to secure the offender's attendance at the preliminary inquiry was incorrect in that the record reflects that she was arrested and thereafter released on a "Written Notice to appear at a Preliminary Inquiry". The notice was issued in terms of s 18(1) of the CJA, which provides:

> 'A police official may, in respect of a child who is alleged to have committed an offence referred to in Schedule 1, hand to the child a written notice provided for in section 56 of the Criminal Procedure Act, but as amended by this section in respect of children, requiring the child to appear at a preliminary

inquiry.'[11]

[25] The provision makes it plain that it is only applicable to a Schedule 1 offence. In this matter, the offender was charged with a Schedule 2 offence, and consequently the method to secure the child's appearance was incorrect. Similarly, the DPP pointed out that in terms of s 48(1)(b)vi) of the CJA a preliminary inquiry may be postponed for a period not exceeding 48 hours where it is necessary to assess the child. In this case the matter was postponed for a period of 72 hours. While the built-in accelerators in the CJA are perhaps designed to ensure that children spend the least amount of time exposed to the criminal justice system, the question which must be answered is whether a delay of an extra 24 hours prejudiced the offender or the complainant and is this delay or the fact that the procedure to secure the offender's attendance so egregious so as to warrant a finding that there has been a failure of justice? I think not. For this reason I also find no merit in the contention that the magistrate conducting the inquiry lacked jurisdiction to preside in the matter once the period of the preliminary inquiry was exceeded. I find nothing objectionable in the magistrate proceeding to deal with the matter despite the period in s 48(1) being exceeded.

[26] The DPP further contended that it was not clear from the record whether the offender's rights were explained to her in terms of s 47(2) of the CJA read with reg 28 of the CJA at the commencement of the preliminary inquiry by the presiding magistrate. The record reflects that the "Accused's rights explained". In light of the record only comprising the manuscript notes of the magistrate, I am not inclined to draw the inferences of irregularity sought by the DPP. These matters could have been fully ventilated and responded to had the DPP served and cited the offender and the presiding magistrate as parties to the litigation. The further arguments of irregularity of the proceedings ultimately suffer the same fate, as they are all based on inferences sought to be drawn from what is not on the record.

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[11] This provision should be read with National Instruction 2 of 2010: Children in Conflict with the Law ("National Instruction"), reg 9(2)(a)(i) which provides that the date of the preliminary inquiry should be set on the "fifth (5th) working day after the date of issuing of the written notice". This provision, however, is not couched in peremptory language.

[27] The DPP further complains that the record shows a lack of participation by the offender in the proceedings before the magistrate at the preliminary inquiry. I am not prepared to make any finding in that regard as the DPP could have elicited the offender's response if it had cited her as a party to these proceedings. It did not and cannot now seek to attribute an irregularity to the magistrate. The suggestion that the diversion order reflected on the record is vague and embarrassing and requires correction, almost eight months after the offender would have completed the diversion programme, falls to be rejected out of hand.

[28] The DPP, in its founding papers, proposed that in light of the irregularities alluded to above, the diversion order be set aside and the matter be remitted for the matter to proceed de novo before another inquiry magistrate. In light of the effluxion of time, by the time it filed its reply to the submission of the CCL, the DPP modified its stance to submit that no further steps should be taken against the offender as it would not be in her best interests. It is in the interest of the offender, the state and the complainant that this matter be brought to finality. The CCL submit that the irregularities in the proceedings of the preliminary inquiry do not warrant the setting aside of the diversion order. I am in agreement therewith and I am of the view that to do so would not be in the child's best interests or that a substantial injustice would otherwise result there from.

[29] I consider that too much time has passed to re-subject the offender to the criminal justice system, and for no clearly identified reason other than to correct procedural irregularities which both the prosecutorial service and the magistracy would no doubt be alert to when similar matters come before them. In particular, careful attention must be given to the particularity in the diversion order by ensuring that the requirements of diversion are met. Magistrates must ensure that a proper written record of the preliminary inquiry is kept, including that the correct process was followed and that the record should clearly show that the complainant's views were considered, where the matter is a Schedule 2 offence.

[30] In the result, I am satisfied that the proceedings in the preliminary inquiry were substantially in accordance with justice.

[31] I make the following order:

1. The application to review and set aside the diversion order made by the presiding magistrate is accordingly dismissed.

2. A copy of this judgment be delivered to:

   a. The Inter-Sectoral Committee for Child Justice;

   b. The KwaZulu-Natal Provincial Child Justice Forum;

   c. The Office of the Director of Public Prosecutions, KwaZulu-Natal;

   d. The Legal Aid of South Africa, KwaZulu-Natal Provincial Office; and

   e. The Department of Social Development, KwaZulu-Natal.

M R CHETTY

I agree

SEEGOBIN J

Appearances:

For the Appellant	A.M Skelton
	Counsel for the Centre for Child Law
For the Defendant:	Adv. J Du Toit
	Directorate of Public Prosecutions, KZN
Date of judgment:	28 June 2016