

## Imprisonment of young offenders the case of DPP, KZN v P

### *Summary of the relevant facts*

This case involved a young girl who at the age of 12 hired two men to kill her grandmother. She was convicted of murder in the High Court and was 14 years at the time her sentence was handed down. The High Court postponed her sentence for three years on condition that she served three years of correctional supervision with certain conditions which included community services and being to her home. The State appealed to the Supreme Court of Appeal (SCA) against the sentence and argued that it was too lenient given the gravity of the offence. The SCA found that the sentence was inappropriate and sentenced her to 7 years imprisonment which was suspended for five years as well as correctional supervision for three years with the same conditions as set out in the High Court order. She was just over 15 years old at the time of the SCA judgment.

Despite handing down a stronger sentence the SCA confirmed the principles which apply to sentencing young offenders, namely

- The best interest of the child principle must be applied;
- Section 28(1) (g) of the Constitution (set out below) must be applied;
- International instruments such as the CRC and the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985) (Beijing Rule) must be considered.
- The 'traditional approach' to sentencing which requires a sentencing court to look at the seriousness of the offence, the character of the accused and the interests of society must be applied;
- The purpose of punishment must be considered;
- Youthfulness is recognised in common law as a mitigating factor;

### *Comment on SCA judgment*

Leading sentencing expert, Professor S Terblanche commented on the SCA's judgment in a recent article. The article focused on how the Court applied section 28 (1)(g) of the Constitution. According to section 28(1)(g) children

have the right not to be detained except as a measure of last resort and if imprisonment cannot be avoided it must be only for the shortest appropriate period of time. If the child is imprisoned he or she must be kept separately from prisoners older than 18 years and the child must be treated in a manner, and be kept in conditions that take his age into account.

Despite the fact that international instruments emphasise reintegration into society when it comes to sentencing young offenders and the Constitution requires that a child be detained as last resort the SCA clearly indicated its willingness to sentence a 12 year old to prison. Terblanche questioned what purpose would be served by imprisoning such a young offender and whether or not it would have been advisable. The SCA indicated that neither the Constitution nor international instruments prohibited imprisonment of children and relied on an English Court judgment in which two 10 year old boys convicted of murder and given a custodial sentence. Terblanche criticised the courts' wrong interpretation of the case.

He indicated that courts have no guidance on determining when imprisonment could be avoided or what would be regarded as 'the shortest period of time' and the SCA made no attempt to lay down some guidelines on this. According to Terblanche the SCA judgment in *DPP, KZN v P* is a step backward from the developments in child justice advanced by the Court in *Brandt*.