

Headnote : Kopnota

Five matters came before the High Court, on review in the ordinary course, in which suspended sentences had been imposed upon youthful offenders. The Court embarked upon an extensive enquiry into the principles governing, and the options available for, the imposition of sentence upon youthful offenders, particularly in the area of jurisdiction of the Eastern Cape Division of the High Court. The enquiry included a report prepared by the Deputy Director of Public Prosecutions (Eastern Cape), a visit to a juvenile detention facility at a prison, interviews with officials of the Department of Correctional Services, and consideration of a circular instruction issued to prosecutors by the Director of Public Prosecutions (Eastern Cape). The following general guidelines for sentencing juvenile offenders were thereupon laid down:

1. Before commencement of the trial the court must, in appropriate cases, promote the enrolment of the accused in a juvenile diversion programme (ie, one of the rehabilitation programmes offered by NICRO, in respect of accused who had successfully completed it and in respect of which the Director of Public Prosecutions had authorised the withdrawal of charges).
2. For the purposes of sentencing the court must properly determine the age of an accused charged as a juvenile, also in borderline cases. If it appears that the age of the accused has been incorrectly recorded in the charge sheet, the court must rectify the record to ensure that his true age is reflected in the warrant of committal, and in other documentation concerning sentence. Because the Department of Correctional Services detains juveniles separately (from adults) on the basis of their age as reflected in the aforesaid documents, and because, for the purposes of the Department, 'juveniles' are persons under the age of 21, it is necessary to determine the age of all prisoners under 21 years, and not only of those who are under 18 years.
3. The court must act dynamically to obtain full particulars about the accused's personality and personal circumstances. Where necessary the court must obtain a pre-sentence report from a probation officer and/or a correctional officer. Such a report is necessary where the accused has committed a serious offence, or where he has previous convictions. It is inappropriate to impose a sentence of imprisonment, including suspended imprisonment, unless such a pre-sentence report has been obtained.
4. The court must exercise its wide discretion sympathetically and imaginatively, to determine a sentence which is suited to the accused, in the light of his personal circumstances and of the crime of which he stands convicted. This entails, *firstly*, the determination of the most appropriate form of punishment and, *secondly*, the adaptation of that punishment to suite the needs of the particular accused.

5. The court must adopt as its point of departure the principle that, where possible, a sentence of imprisonment should be avoided, and should bear in mind especially (a) that the younger the accused, the less appropriate imprisonment will be, (b) that imprisonment is inappropriate in the case of a first offender, and (c) that short-term imprisonment is rarely appropriate. The court should thus always consider the appropriateness of other sentencing options. However, if, in all the relevant circumstances and upon a consideration of the objects of sentencing, imprisonment appears to be the appropriate sentence, the court must impose it.
6. The court must not impose suspended imprisonment where imprisonment is inappropriate for the particular accused.