

THE STATE

Versus

R M (A juvenile)

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 5 OCTOBER 2006

Criminal Review

NDOU J: The accused is a juvenile aged 17 years. She is a female first offender. She was employed at the place of offence by someone sharing the premises with the complainant. She was charged, was duly convicted of unlawful entry at the complainant's premises and theft of a radio with speakers. The property is valued \$160 000,00 and was recovered. Nothing turns on the conviction. She was sentenced to undergo 24 months imprisonment, with 8 months suspended on conditions of good behaviour. The trial magistrate did not consider the question of community service at all. This is a misdirection bearing in mind that the effective sentence imposed is 16 months – *S v Antonio* HH-110-98; *S v Manyevere* HB-38-03; *S v Khumalo* HB-39-03 and *S v C M* HB-67-03. A prison sentence is a severe and rigorous sentence which should only be imposed as a last, and not first resort, especially when the offender is a juvenile as is the case here. In these prevailing harsh economic conditions, children, especially orphans like the accused here, are forced to enter the labour market. When this happens, the courts should protect their rights in terms of the national legislation and international laws and instruments, e.g. Articles 15 and 17 of the African Charter on the Rights and Welfare of the Child (OAU Doc Cab/Leg/24.9/49 1999), Articles

32 and 40 of the Convention on the Rights of the Child, as adopted by the General

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Assembly of the United Nations by resolution 44/25 of 20 November 1990 and Article 3 of the Worst Forms of Child Labour Convention, 1999 [C 182]. When dealing with such child offenders the provisions of these international instruments should be borne in mind. *In casu*, the fact that the accused was a child worker should have been regarded as a strong mitigatory factor. Employers take calculated risks associated with juvenile delinquency and immaturity when they employ children of the accused's age. The offence should not be condoned, but the punishment imposed should be consistent with punishment of other juveniles. Youthfulness of the accused, and the fact that she stole out of need was not accorded proper weight. On account of the above misdirection, this court is at large as far as sentence is concerned.

Accordingly, I confirm the conviction. The sentence of court *a quo* is set aside and substituted as follows:

“10 months imprisonment of which 7 months imprisonment is suspended for 4 years on condition the accused in that period does not commit any offence of theft and dishonesty and for which she is convicted and sentenced to imprisonment without the option of a fine.”

The accused and prison authorities must be informed of this order as soon as possible.

Cheda J I agree