

THE *CHILD JUSTICE ACT*: PROCEDURAL SENTENCING ISSUES

SS Terblanche*

SUMMARY

In this contribution a number of procedural issues related to the sentencing of child offenders and emanating from the *Child Justice Act 75 of 2008* are considered in some detail. As a general rule, the Act requires pre-sentence reports to be obtained from probation officers before sentencing any child offender, with only a limited number of exceptions. The article argues that the peremptory nature of the Act means that a probation report is always required, even if reports by other experts are also available. The exceptions are limited to instances other than those where the child offender is sentenced to any form of imprisonment or to residence in a care centre. The article addresses the question of whether or not the reference to imprisonment includes alternative imprisonment which is imposed only as an alternative to a fine. It suggests that alternative imprisonment should, generally, not be imposed on child offenders. When an exception is not prevented because of the sentence, a pre-sentence report may be dispensed with only when the offence is a schedule-1 offence (the least serious class of offences) or when obtaining a report would prejudice the child. It is argued that these exceptions are likely to occur rather rarely. A final aspect of the Act's provisions on pre-sentence reports is the requirement that reasons be given for a departure from the recommendations in a pre-sentence report. This requirement merely confirms the status quo.

The Act permits the prosecutor to provide the court with a victim impact statement. Such a statement is defined in the Act. It is a sworn statement by a victim or someone authorised by the victim explaining the consequences to the victim of the

* Stephan S Terblanche. BIur (PU for CHE), LL.D (Unisa). Professor, Department of Criminal and Procedural Law, Unisa, South Africa. Email: terblss@unisa.ac.za. Unisa provided funding for research visits, and the Max Planck Institute for Foreign and International Criminal Law, Freiburg, Germany made available its research facilities. I want to express my gratitude to both institutions.

commission of the crime. The article also addresses the issue of whether or not the child justice court might *mero motu* obtain a victim impact statement when the prosecution does not do so.

Finally, the article addresses appeals against and reviews of the trial courts' sentences. It notes that appeal by the child offender is made somewhat easier, as some child offenders need not obtain leave to appeal. These include children under the age of 16, or older children sentenced to imprisonment. Again, the meaning of "imprisonment" is at least somewhat ambiguous. The provisions on automatic review have attracted considerable judicial attention already. The majority of these judgments confirmed the apparently clear wording of the Act, in terms of which the cases of all child offenders under the age of 16 should be reviewed regardless of whether they were legally represented or of the sentence imposed. In the case of child offenders aged 16 or 17, only custodial sentences are reviewable. The judgments which found this to be an incorrect interpretation are dealt with in some detail, with the conclusion that they were incorrectly decided.

KEYWORDS: child justice; pre-sentence report; victim impact statement; review of child justice proceedings; appeal against sentence; juvenile justice – South Africa; juvenile justice – sentences.