S v S 1999 (1) SACR 608 (W)

Citation	1999 (1) SACR 608 (W)
Court	Witwatersrand Local Division
Judge	Nugent J
Heard	March 19, 1999
Judgment	March 19, 1999
Annotations	None

Flynote : Sleutelwoorde

Review - Special review in terms of s 304(4) of Criminal Procedure Act 51 of 1977-In what cases - Putting into operation of suspended sentence - Scheme of relevant provisions of Act reflect intention that all criminal proceedings in magistrates' courts should be capable of being considered by the Court on review - Such interpretation consonant with s 39(2) of Constitution Act 109 of 1996-Section 304(4) quite capable of a construction which includes a review of a decision by a magistrate to put a suspended sentence into operation.

Headnote : Kopnota

The accused, a 16-year-old boy, had been convicted in 1997 of theft and was sentenced to imprisonment for one year which was suspended for five years on condition that he was not again convicted of theft and that he submitted himself to the authority of the personnel in charge of a Christian care centre until he was discharged. The accused remained in the care centre until the end of 1998 when he was given leave of absence until 10 January 1999 in order to visit his family. After a short while with a relative in Johannesburg he travelled to Cape Town to visit his mother but after a few days the accused indicated that he wished to return to the care centre and accordingly caught a bus to the centre. He however got off the bus at a stop before his destination but missed the bus when it departed and when he did not arrive at his destination it was assumed that he had absconded and a warrant was issued for his arrest. Before the warrant was issued, contact had been made with the centre, on behalf of the accused, in order to ensure his return to the centre but through administrative confusion, this was not organised in time to prevent the warrant being issued. When the accused was brought before a magistrate on the warrant an application was sought for the putting into operation of the suspended sentence. No attempt was made to clear up the anomaly that the accused, according to the uncontested facts which were before the magistrate, had been given leave of absence until 10 January and was not obliged to have been at the centre at the relevant time. The magistrate held that the accused had tried to get away from the centre as quickly as possible and that attempts to rehabilitate him had failed.

The matter was brought to the attention of a Judge in Chambers by a member of the public who had taken it upon herself to act *in loco parentis* to the accused. The Judge requested the record to be prepared and laid before him in order to determine whether it should be dealt with in terms of s 304(4) of the Criminal Procedure Act 51 of 1977. When the Court had received and considered the record it doubted that the proceedings were in accordance with justice and the magistrate was requested to respond to certain queries. The magistrate responded to the request but questioned upon what basis he was required to do so.

The Court proceeded to examine the question whether a decision of a magistrate to put into operation a suspended sentence was subject to review in terms of s 304(4) of the Act and held that the scheme of the relevant provisions of the Act reflected an intention of the part of the Legislature that all criminal proceedings in the magistrates' courts should be capable of being considered by the Court on review and corrected where they

were not in accordance with justice. The Court was furthermore enjoined by s 39(2) of the Constitution of the Republic of South Africa Act 109 of 1996 to `promote the spirit, purport and objects of the Bill of Rights' which provided in s 35(3) that every accused person was entitled to a fair trial, which included the right of `appeal to, or review by, a higher Court'. In the view of the Court it would be a parsimonious construction of the Bill of Rights which confined it only to the immediate consequences of the trial itself. The clear spirit, purport and object of that section was to ensure that no person was condemned to endure a penalty provided for by the criminal law without recourse being had to another court in order to correct any irregularity or injustice which might have occurred in the course of the proceedings which had had that result. Section 304(4) of the Act was quite capable of a construction which included within its terms a decision by a magistrate to put a suspended sentence into operation, and if there was any doubt in that regard that was the construction which ought to be favoured in order to give effect to the spirit, purport and objects of the Bill of Rights.
The Court held on the merits that there had been no evidence whatsoever that the accused had failed to co-operate with the authorities or that he had been at all obstructive of attempts to rehabilitate him. The magistrate had in the circumstances grossly misdirected himself in the exercise of his discretion and the Court was entitled in terms of s 304(2)*(c)* of the Act to make any order in the proceedings which might be required to promote the ends of justice. Ordinarily it would simply have set aside the order made by the learned magistrate but a particular difficulty arose in the present case as the accused had already been imprisoned for some seven weeks and the effect of setting aside the order made by the magistrate would be that while the accused would be released from prison, the balance of his sentence would remain suspended on the conditions which were attached to it when it was originally imposed. The Court accordingly ordered the Commander of the prison where the accused was being held to inform the accused, if he chose not to serve the remainder of his sentence of imprisonment but instead to be released from prison on the conditions which attached to the suspension order, that the accused should notify the Registrar of the Court to that effect in writing. The Commander was further ordered to inform the accused in the event that he notified the Registrar that the Court would make an order setting aside the suspended sentence and suspending the balance thereof upon the conditions stipulated in the original order. The accused would be released from prison forthwith and the accused was to present himself to the care centre as required by the terms of the sentence originally passed upon him. The Commander of the prison was also ordered to provide such assistance to the accused as would enable him to make an informed decision with regard to the rights accorded to him by the order and in particular to assist the accused to obtain advice and assistance in that regard from a social worker employed by Nicro and such other persons as the accused might wish to consult.

Case Information

Review.

Judgment

Nugent J: This matter was brought to my notice by a member of the public, a certain Mrs Whitcher, who has apparently taken it upon herself to act *in loco parentis* to the accused, who is 16 years old and imprisoned in the Johannesburg Prison. The reasons for her having done so have since become apparent from the record in this matter. I might add that she also informed me that the accused was being imprisoned together with adult offenders and she expressed her concern at that state of affairs. As a result I visited the prison where the accused is incarcerated and established that her information was not correct. At the time of my visit the accused was being held in the juvenile section of the Johannesburg Prison with other juvenile offenders.

The matter concerns a suspended sentence which was put into operation by the learned magistrate at Randburg on 26 January 1999. Before dealing with the merits of that decision, there are certain preliminary matters raised by the learned magistrate which I should deal with.

Section 302 of the Criminal Procedure Act provides for the automatic review by the High Court of certain specified criminal proceedings which have taken place in the magistrates' courts. In cases to which that section applies, the record of the proceedings is automatically laid before a Judge in Chambers, who is required to satisfy himself that the proceedings were in accordance with justice. If he has any doubt in that regard, he is required to obtain the magistrate's reasons for convicting and sentencing the accused (except in certain specified circumstances), before laying the proceedings before this Court for consideration. Even where reasons have been given by the magistrate at the time of convicting and sentencing an accused, it is usual to refer any queries that the reviewing Judge might have to the magistrate concerned, and the views of the Attorney - General are also usually sought. These are salutary practices intended to assist a Court to reach a considered conclusion on the matter.

Further provision is made in s 304(4) for the review of matters which are not subject to review in the ordinary course. In terms of that section, if it is brought to the notice of a Judge of the High Court which has jurisdiction that, in a criminal case in which a magistrate has imposed a sentence which is not subject to review in the ordinary course, or in which a regional court has imposed any sentence, the proceedings were not in accordance with justice, such Judge has the same powers in respect of those proceedings as if the record had been laid before him in the manner which I have already described.

In *S v Mafu* 1966 (2) SA 240 (E), which dealt with the predecessor of s 304(4), it was said at 241G - H that as a general rule this Court will decline to allow aggrieved persons to use that procedure as a cheap and easy means of obtaining redress, but `where the interests of justice clearly require the intervention of this Court we will not hesitate to exercise *(those)* powers'. (See too *S v Eli* 1978 (1) SA 451 (E).)

The present proceedings were not reviewed by a Judge in Chambers in the ordinary course. When the matter was brought to my notice I accordingly requested the record to be prepared and laid before me in order to determine whether it should be dealt with in terms of s 304(4). Once I had received and considered the record I was indeed doubtful that the proceedings were in accordance with justice, and my view was shared by the representative of the Attorney - General to whom the matter was referred for the benefit of his opinion. The learned magistrate was accordingly requested to respond to certain queries which I had. The learned magistrate has responded to that request, but has questioned upon what basis he was required to do so. He has pointed out that the accused was represented by an attorney throughout the proceedings, and that `one necessarily expect that if there were a query on the merits that appeal procedures be followed, so too, if any irregularity is alleged, special review procedures'. The learned magistrate will of course be aware that the decided cases are to the effect that no appeal lies against a decision to put a suspended sentence into effect (*R v Dunn* 1929 TPD 53; *R v Khalpy* 1958 (1) SA 291 (C); *R v Khan* 1961 (1) SA 282 (N); *S v Van Nieuwenhuizen* 1972 (3) SA 575 (T); *S v Helm* 1980 (3) SA 605 (T)). As for the question of review, that is of course precisely why I called for the record in the first place: in order that it may be placed before this Court to determine whether the powers of review provided for in s 304(4) of the Act may, and should, be exercised in the present case. The learned magistrate was requested to provide his response to the various queries which I raised with him in order that they might be taken into account by this Court in that process.

I turn then to the merits of this matter. Before dealing with the facts, there is a

preliminary question of law which requires to be dealt with. I have already indicated that it has been held in various cases that a decision by a magistrate to put a suspended sentence into operation is not capable of being taken on appeal. In all those cases the reason for so holding was based upon the wording of what is now s 309(1)*(a)* of the Act, which provides that any person convicted of any offence by any lower court `may appeal against such conviction and against any resultant sentence or order'. In *S v Helm* (*supra*) and in the cases which preceded it (which dealt with similar wording in earlier statutes) it was held that when a person is first given a suspended sentence, that is the `resultant sentence' from his conviction, and that a subsequent decision which is made to put that sentence into operation accordingly does not fall within the terms of the section (see especially at 605H).

Those decisions were not based upon a principled objection to the appealability of such a decision, but upon a construction of the wording of the particular section of the Act which allows for appeals at the instance of the accused from the decisions made by the lower courts. It is not necessary in the present case to decide whether those decisions ought to be followed in the future. The question which arises in the present case is whether such a decision made by a magistrate, even if it is not capable of being taken on appeal by the accused in terms of s 309(1)*(a)* of the Act, is nevertheless capable of being placed before this Court to be dealt with in the exercise of the review powers which it has in terms of s 304(4). That section entitles this Court to review the proceedings in `any criminal case in which a magistrate's court has imposed a sentence' if that sentence is not subject to review in the ordinary course. *A fortiori* it may deal with the matter if the sentence is subject to review in the ordinary course.

In *Gasa v Regional Magistrate for the Regional Division of Natal* 1979 (4) SA 729 (N) it was held that the proceedings in which a suspended sentence is put into operation are not capable of being reviewed in terms of s 304(4). At 732E - F Hefer J said the following:

> `We are not concerned here with the proceedings in which the sentence was imposed, nor has it been brought to our notice that *those* proceedings were not in accordance with justice. We are concerned with the proceedings in which the sentence which had earlier been imposed was subsequently put into operation and to those proceedings the words of the section do not extend.'

That decision is, of course, not binding upon this Court, but it is to be accorded the weight which is deserving of a considered decision arrived at by another Court. Notwithstanding that, in our view the construction which was placed upon the section in that case was an unduly narrow one. It seems to us that when a court ultimately directs that a person should be subjected to imprisonment, that step is quite capable of being construed as the `imposition' of the relevant sentence. In our view the scheme of the relevant provisions of the Act reflects an intention on the part of the Legislature that all criminal proceedings in the magistrates' courts should be capable of being considered by this Court on review, and corrected where they are not in accordance with justice. We might add that s 302(2)*(b)* of the Act, which was relied upon by the learned Judge in aid of his interpretation of the section, has since then been repealed. In addition, whatever the position might have been at the time that case was decided, this Court is enjoined by s 39(2) of the Constitution of the Republic of South Africa 1996 to `promote the spirit, purport and objects of the Bill of Rights', which provides in s 35(3) that every accused person is entitled to a fair trial, which includes the right of `appeal to, or review by, a higher Court'. In our view it would be a parsimonious construction of the Bill of Rights which confined it only to the immediate consequences of the trial itself. In our view the clear spirit, purport and object of that section is to ensure that no person is condemned to endure a penalty provided for by the criminal law without recourse being had to another court in order to correct any irregularity or injustice which might have occurred in

the course of the proceedings which have had that result. In our view s 304(4) of the Act is quite capable of a construction which includes within its terms a decision by a magistrate to put a suspended sentence into operation and, if there is any doubt in that regard, that is the construction which ought to be favoured in order to give effect to the spirit, purport and objects of the Bill of Rights. It would be unconscionable if a decision of that nature could be made quite capriciously, and a higher Court could not provide redress either by appeal or by review, and we are fortified in this view by the decisions in *S v Hendricks* 1991 (2) SACR 341 (C) and *S v Zwane* 1996 (2) SACR 281 (T).

I turn then to the facts of this matter. On 10 October 1997 the accused was convicted, on a plea of guilty, of the theft of a pistol. He was then 15 years old. A social worker employed by NICRO, a certain Ms Taft, prepared a report relating to the circumstances of the accused, which was placed before the court for the purpose of sentencing. That report records that the accused's parents divorced shortly after his birth. When he was not yet three years old, a Childrens' Court found that his parents were unfit to care for him and he was placed in foster care. It seems that sometime thereafter he returned to live with his mother, who remarried and again divorced. She attempted to commit suicide on two occasions, which traumatised the accused (if his unstable circumstances had not already done so) and he took to using drugs. He was placed in foster care on a second occasion, but this proved to be unsuccessful, and he was admitted to Boys' Town when he was 13 years old. He absconded from Boys' Town on various occasions and was living on the streets at the time he committed the offence for which he was convicted. Ms Taft expressed the opinion that the accused needed stability and professional help to deal with his drug problem, and she recommended that he be placed at Noupoort Christian Care Centre to enable him to be rehabilitated.

The learned magistrate sentenced the accused to imprisonment for one year, which was suspended for five years on the following conditions:

`1. Accused is not again convicted of theft committed during the period of suspension.
2. Accused submit himself to the authority of the personnel in charge of Noupoort Christian Care Centre, Noupoort until discharged.'

A Judge of this Court certified that those proceedings were in accordance with justice on 27 November 1997. The accused duly presented himself to the Noupoort Christian Care Centre, and it appears from the record that he remained there throughout 1998, where he completed std 6, and was awarded provincial colours in an athletic event. There is no suggestion at all in the record that the accused presented any difficulties at all during the period of his stay at the Centre.

The following further facts can be pieced together from the rather sketchy and not altogether coherent material which the magistrate had before him at the time he made his decision. Most of these facts emerge from submissions which were made to the learned magistrate by the accused's attorney, none of which was placed in issue.

At the end of 1998 the accused was given leave of absence from the Centre until 10 January 1999 in order to visit his family. After a short time with an aunt in Johannesburg, he travelled to Cape Town to visit his mother. That visit was not altogether successful, and after a few days the accused took a bus from Cape Town in order to return to Noupoort. At Laingsburg the accused left the bus. According to the accused he got himself into a scrape at Laingsburg with the result that the bus left without him. When he did not arrive on the bus at Colesberg a member of the staff of the Noupoort Centre assumed that he had absconded, and reported this to Ms Taft on 29 December 1998. In the meantime, the accused had hitch-hiked to Johannesburg, where he went to stay at the home of Mr and Mrs Whitcher from 3 January 1999. On 6 January 1999 he contacted Ms Taft who thereafter met with him. Ms Taft contacted the Noupoort Centre and was advised that the Centre would not have the accused back. It subsequently

transpired that the reason for this was that the requisite fees for the forthcoming year had not been paid. Two days later Ms Taft received a letter from the Centre informing her that the necessary arrangements had now been made and that the accused could return.

On 14 January 1999 Ms Taft deposed to an affidavit setting out what had occurred, and on the same day a warrant was issued for the arrest of the accused. It seems that the accused was duly arrested, and he appeared before the learned magistrate at Randburg on 21 January 1999 to face an application by the State for his suspended sentence to be put into operation. In view of his background as it was outlined in the earlier report prepared by Ms Taft, it is not surprising that neither of the accused's parents was present to assist him in those proceedings, and that Mrs Whitcher should have stepped in to act *in loco parentis*.

Section 297(9)*(a)* of the Act provides that if it appears from information under oath that a person has failed to comply with a condition attached to a suspended sentence, such person may be arrested and detained and brought before the court which suspended the operation of the sentence. That court may then put into operation the sentence which was suspended. Section 297(7), on the other hand, provides that a court which has suspended the operation of a sentence may, `if satisfied that the person concerned has through circumstances beyond his control been unable to comply with any relevant condition, or for any other good and sufficient reason', further suspend the operation of the sentence.

We have assumed in the present case that the accused did indeed fail to comply with the second condition of the suspension. As I have already indicated, according to the uncontested facts which were placed before the magistrate the accused had been given leave of absence until 10 January 1999, and was thus not obliged to have been at the Noupoort Centre at the relevant time in any event. Nevertheless, when the accused was asked by the learned magistrate whether he agreed that he had breached the condition, the accused said that he agreed. No attempt was made to clear up this apparent anomaly, although the accused's attorney did say at the commencement of his submissions that `the accused has not breached conditions 1 and 2 of the order in a sense that he has not been charged with having committed another offence of theft, and secondly I submit, with respect, that he has not left the Noupoort Christian Centre unlawfully'.

We have nevertheless assumed that the accused did breach the condition, but that was by no means the end of the matter, because it did not follow that the suspended sentence was to be put into operation for that reason alone. The learned magistrate was vested with a discretion to do so by s 297(9)*(a)* of the Act. Furthermore, s 297(7) vested him with a discretion to further suspend the sentence if the accused was unable to comply with the condition `through circumstances beyond his control' or `for any other good or sufficient reason' (see in this regard *Berg v Regional Magistrate, Southern Transvaal, and Another* 1956 (2) SA 676 (T) at 678D). Needless to say, the discretion which was conferred upon him by both these provisions was one which was required to be exercised judicially (as to the manner in which courts have exercised that discretion in various circumstances, see Du Toit *Straf in Suid - Afrika* at 392).

There is nothing on the record to suggest that during the year or more that the accused was at the Noupoort Centre he did not co-operate fully with the authorities, or that progress was not made towards his rehabilitation, or that he made attempts to abscond. Furthermore it was not disputed that he was entitled to have left the Centre on leave of absence, and was not bound to return until 10 January 1999. It was also not disputed that he missed the bus through no fault of his own, and that soon thereafter he made contact with his social worker. What was it, then, that required that the programme of

rehabilitation to which he had subjected himself for the past year or more should have been interrupted, and the accused incarcerated in prison instead? Even the State did not persist in demanding this. The submissions made by the prosecutor appear in the record as follows:

> `Your worship, it is true that it was indicated that should the accused breach the offence, (*sic*) that certainly the suspended sentence will be put into operation. No offence has been committed even though the accused did not go back to the said Noupoort School. The State would submit, that if it is in the interest of the accused, that he certainly can go back to the said Noupoort School for the continuation of the said rehabilitation programme. The State has no objection to that, your worship.'

In response to my queries to the learned magistrate as to the grounds upon which it was found that the accused had culpably breached the conditions of the suspension, the learned magistrate has referred me to the *ex tempore* reasons which he gave at the time. I regret that we can find nothing therein to justify his decision. On the contrary, in our view his reasons are quite perverse. Throughout his judgment the learned magistrate suggested that the accused had been unco-operative, resisted attempts to rehabilitate him, and had `run away' from the Centre. There is nothing on the record to support those conclusions. There was no evidence whatsoever that the accused had failed to cooperate with the authorities at Noupoort, or that he had been at all obstructive of attempts to rehabilitate him. As for his absence when the bus arrived from Cape Town, I have already pointed out that he provided an explanation which was not placed in issue. If the learned magistrate felt inclined not to accept that explanation when it was advanced by the accused's attorney on his behalf, with no objection by the State, in our view his duty was to inform the accused's attorney so that if necessary the accused had an opportunity to prove it by way of evidence. Furthermore, it is clear from various passages in the learned magistrate's reasons that his conclusion was heavily influenced by accused's conduct before he was convicted of the offence for which he was sentenced. Undoubtedly all that was relevant for the purpose of sentencing the accused on 10 October 1997 but in the circumstances it was hardly relevant to whether that sentence should be put into operation. What was more relevant was how the accused had conducted himself since the sentence was imposed. That question was hardly enquired into, and to the extent that there was information before the court on this issue, it seems all to have been in the accused's favour. The approach taken by the learned magistrate in this regard is summed up in his conclusion, which was expressed in the following terms:

> `At the end of the day, Mr S, the court is of the opinion that the reasons furnished for you to be replaced in the care of Noupoort Christian Care Centre, as shown from your previous conduct and other facilities of this nature, it is so that the court cannot or has no basis as to refer you back to Noupoort. There are just about no grounds that the court can find in your conduct that shows that you will stay there. The only evidence in front of me is that on all occasions you tried to get away as quickly and as soon as possible and all attempts to rehabilitate you in facilities such as Noupoort Care Centre has failed.'

We cannot see on what basis the learned magistrate reached this conclusion. There is nothing at all on the record to support it. On the contrary, the few facts which were placed before the learned magistrate suggested quite the contrary. The learned magistrate appears to have assumed that because the condition was breached, that was sufficient reason to put the sentence into operation. That is not correct. Even assuming (as the learned magistrate appears to have done) that the accused deliberately failed to return to Noupoort, he was still called upon to properly exercise the discretion which he had to determine whether the sentence should be put into operation, which required him to take into account all material factors. We can find no indication from the reasons which he gave that he did so. On the contrary, as I have already indicated, his reasons indicate quite the contrary. Indeed, the very fact that he put the sentence into operation was in our view so unreasonable in the circumstances as, by itself, to justify the inference that he did not.

Even if the accused had deliberately failed to return to Noupoort, the fact remains that he had attended at the Centre for over a year, where progress was being made towards his rehabilitation. We cannot see that any good purpose was served, either to the accused or to society at large, by then sending him to prison rather than further suspending the sentence in order to provide an incentive for him to continue attending at Noupoort. In our view the learned magistrate grossly misdirected himself in the exercise of his discretion, and we have no doubt that his decision is liable to be set aside. To revert to what was said in *S v Mafu* (*supra*) in our view this is indeed a case in which the `interests of justice clearly require the intervention of this Court' and we should not hesitate to exercise the powers provided for by s 304(4) of the Act. I might only add that the Attorney - General's representative agrees with that conclusion, and we are grateful for his ready assistance.

In terms of s 304(2)*(c)* of the Act this Court is entitled to make any order in the proceedings which might be required to promote the ends of justice. Ordinarily we would simply set aside the order made by the learned magistrate, but a particular difficulty arises in the present case. The accused has already been in prison for some seven weeks. Bearing in mind the possibility of parole, that might already constitute a substantial part of the sentence which the accused will be required to serve. The effect of setting aside the order made by the magistrate would be that, while the accused would be released from prison, the balance of his sentence would remain suspended on the conditions which were attached to it when it was originally imposed. Neither this Court, nor indeed any other court, can force the accused to return to the Noupoort Centre, where he will be required to remain for an indefinite period if he is to avoid further breaching the conditions of suspension. It is quite conceivable that, with the fear of entering prison having been removed, and a substantial part of his sentence already having been served, the accused might now consider that the prospect of serving the remainder of his sentence is not a sufficient incentive to persuade him to pursue his rehabilitation at Noupoort. It was, of course, in the very nature of the sentence which was imposed upon him from the outset, that the accused had the choice of serving his sentence of imprisonment, or submitting himself to rehabilitation at the Noupoort Centre, which he then chose to do and was willing to do at the time the sentence was put into operation. What has since changed, however, is that the incentive to pursue the court of rehabilitation has been lessened, by reason of the fact that a substantial part of the sentence has already been served. That is most unfortunate, but it was an inevitable consequence of putting the sentence into operation in the first place. No purpose at all would be served in ordering the release of the accused if he were to now simply refuse to return to Noupoort, preferring instead to serve out the remainder of his sentence. We have accordingly structured our order so as to void the practical difficulties which would arise if the accused were now to choose not to return to the Noupoort Centre, which this Court cannot compel him to do.

Accordingly the following order is made:

The Registrar is directed to forward a copy of this judgment to the Commander of the Johannesburg Prison, and to request the said Commander:

1. To inform the accused that if the accused chooses not to serve the remainder of his sentence of imprisonment, but instead to be released from prison on the conditions which attached to the suspension order made on 10 October 1997, then the accused shall notify the Registrar of this Court to that effect in writing.
2. To inform the accused further that in the event that he so notifies the Registrar, an order will be made by this Court in the following terms:

   `2.1 The decision made on 26 January 1999 to put the suspended sentence into operation is set aside. The balance of the sentence imposed upon the

accused on 10 October 1997 is further suspended for the balance of the period and upon the conditions stipulated in the order which was made on that date.

2.2 The accused is to be released from prison forthwith.

2.3 The accused shall present himself to the Noupoort Christian Care Centre as required by the terms of the sentence passed upon him on 10 October 1997 within 15 days from the date of his release from prison and remain there until he is discharged, failing which the State shall be entitled to commence proceedings against him in terms of s 297(9)*(a)* of the Criminal Procedure Act.'

3. To provide such assistance to the accused as will enable him to make an informed decision with regard to the rights accorded to him by this order, and in particular to assist the accused to obtain advice and assistance in that regard from Ms Taft, a social worker employed by NICRO, and such other persons as the accused might wish to consult.1999 (1) SACR p618