

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**



(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

Case number: A288/2015

In the matter between:

KHAZAMULA, BEN TEBOGO

Appellant

And

THE STATE

Respondent

JUDGMENT

SATCHWELL J:

INTRODUCTION

1. The appellant was initially charged with two offences – robbery with aggravating circumstances and rape. Before us is only the charge sheet in respect of the rape offense. The appellant pleaded guilty to the charge of rape and handed a detached section 112 statement in terms of the Criminal Procedure Act.

2. He was correctly found guilty.
3. The appellant was sentenced to serve a sentence of ten years imprisonment which is the minimum sentence which may be imposed in the absence of “substantial and compelling circumstances” it is that sentence which is now appealed.
4. That the appellant pleaded guilty is no indication of remorse. After all DNA evidence which said the learned magistrate amounted to an overwhelming case. In this regard see *S v M* 2007 (2) SACR 60 (W).
5. The appellant did spend a substantial period of time in custody from his arrest on 14th January 2013 until his conviction and sentence on 13th March 2015. But much of this time was expended on a bail application which had no value at all. It is difficult to see how keeping a guilty person in custody as an awaiting trial prisoner should then become the motivation for releasing him or her earlier from justified imprisonment
6. What must be remembered is that Act 101 of 1997 prescribed minimum and not maximum sentences. I do not suggest that in the present case a sentence of twelve or fifteen or even eighteen years might be appropriate. However, I do see from the carefully considered and written judgment of the learned magistrate that all relevant factors were taken into account and that the learned magistrate found no reason to depart from the prescribed minimum by reducing or increasing the sentence.
7. In the result the appeal is dismissed.

DATED AT JOHANNESBURG 14 MARCH 2016

SATCHWELL J

I agree.

MOKOENA AJ

Counsel for Appellant: Adv JL Kgokane
Attorneys for Appellant: Legal Aid of SA
Counsel for Respondent: Adv N Kowlas
Attorneys for Respondent: Office of DPP
Dates of hearing: 14th March 2016.
Date of judgment: 14th March 2016.