

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case no: A70/2021

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

In the matter between:

DAWIE VAN DER WALT

Appellant

and

THE STATE

Respondent

CORAM:

MATHEBULA, J *et* RAMOS, AJ

HEARD ON:

24 JANUARY 2022

JUDGMENT BY:

RAMOS AJ

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII on 01 June 2022. The date and time for hand-down is deemed to be 01 June 2022 at 10H00.

INTRODUCTION

[1] This is an appeal against both convictions and sentences. The Appellant was convicted in the Regional Court held at Bloemfontein on 15 March 2018 on the following counts: -:

Count 1: contravention of the provisions of section 3 read with provisions of Act 32 of 2007 as well as provisions of Act 51 of 1977. The main allegation is that he penetrated minor child genitals to *wit* A [...] L [...] with his fingers

Count 2: contravention of the provisions of section 3 read with provisions of Act 32 of 2007 as well as provisions of Act 51 of 1977. The main allegation is that he penetrated minor child genitals to *wit* E [...] P [...] with his fingers.

Count 3: contravention of the provisions of section 5(1) read with provisions of Act 32 of 2007 as well as provisions of Act 51 of 1977. It is alleged that he touched the private parts (vagina) of a minor child to *wit* C [...] B [...] - M [...] while she was sleeping.

Count 4: contravention of the provisions of section 5(1) read with provisions of Act 32 of 2007 as well as provisions of Act 51 of 1977. It is alleged that he touched the private parts (vagina) of the minor child to *wit* E [...] P [...] while she was sleeping.

[2] He was sentenced as follows:

Count 1: ten (10) years imprisonment

Count 2: ten (10) years imprisonment

Count 3 and 4: five (5) years each, taken together for purposes of sentencing. The effective term of imprisonment is twenty-five (25) years.

[3] The Appellant's application for leave to appeal convictions and sentences was refused by the court *a quo*. He approached the High Court by way of petition and was granted leave to appeal by members of this court on 15 February 2021.

GROUND OFS OF APPEAL

[4] The Appellant's grounds for the appeal are the following: -

- i) the court *a quo* erred in finding that the state proved its case beyond reasonable doubt
- ii) the court *a quo* erred in finding that the evidence of minor complainants, who were single witnesses, was satisfactory in all material respects
- iii) the court *a quo* erred in finding the evidence of the minor complainants as reliable
- iv) the sentence of twenty-five (25) years was shockingly harsh and inappropriate.

ADJUDICATION OF THE APPEAL

[5] It is trite law that a court of appeal will not likely intervene with the credibility findings of the trial court. In the absence of an irregularity or misdirection, the court of appeal is bound by such credibility findings, unless it is convinced that such findings are clearly incorrect.¹

[6] When dealing with the trial court's findings of fact, the court of appeal should take into account that the trial court was in a more favourable position to form a judgment because it was able to observe the witnesses during their questioning and was absorbed in the atmosphere of the trial.² Therefore, the court of appeal will normally accept factual findings made by the trial court, unless there is some indication that a mistake was made. In *S v Hadebe*³ Marais JA eloquently stated the approach in the following terms: -

"Before considering these submissions it would be as well to recall yet again that there are well-established principles governing the hearing of

¹ *S v Francis* 1991 (1) SACR 198 (A) at 204c - e; *S v Mkohle* 1990 (1) SACR 95 (A) at 100e

² Schmidt and Rademeyer, Law of Evidence, LexisNexis ed para 3 – 40 & judgments relied upon

³ 1997 (2) SACR 641 (SCA) at 645e - f

appeals against findings of fact. In short, in the absence of demonstrable and material misdirection by the trial Court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong. The reasons why this deference is shown by appellate Courts to factual findings of the trial court are so well known that restatement is unnecessary.”

[7] However, in order to ensure a convicted person’s right of appeal is not illusory, the court of appeal has a duty to investigate the trial court’s factual findings in order to ascertain their correctness and if a mistake has been made to the extent that the conviction cannot be upheld. It is the duty of the court of appeal to interfere.⁴

SUMMARY OF THE AVAILABLE EVIDENCE

THE STATE CASE

[8] The state called three complainants in this matter namely, AL, EP and CM. The first complainant was eight years old at the time of the incident and nine (9) years old when she gave evidence in court via the services of an intermediary. She was uncertain of the exact date of the incident but it was common cause that it occurred in and around the Easter weekend of 2016. She testified of the events, which transpired at a sleepover at the home of the Appellant who was in a relationship with her Aunt.

[9] The three complainants together with the Appellant and his girlfriend (“aunt”) slept in the living room that evening. The complainant AL, slept on the couch while the accused and his girlfriend slept on a mattress on the floor positioned adjacent to AL.

[10] At some stage during the night she woke up feeling someone touching her. She looked and saw that it was the Appellant touching her vagina. She referred to

⁴ S v M 2006 (1) SACR 135 (SCA) para 40; Protea Assurance CO Ltd v Casey 1970 (2) SA 643 (A) at 648E.

her private part as her “foenoenoekie”. She illustrated the area where he touched her, using an anatomically correct doll used in proceedings involving child victims. She pointed to the dolls private area depicting the vagina.

[11] She explained further that his fingers went inside her vagina underneath her underwear. She was clear that his fingers were inside her vagina and explained that “hy maak sy vingers so op en af dan, en hy doen goeters”. Even though it was dark and the lights were off, she could see the Appellant smiling while he was fiddling with her. He promised to buy her a chocolate if she kept quiet which prompted her not to tell anyone.

[12] A few months later, her mother questioned her whether anyone has ever touched her private parts. This discussion prompted her to tell her mother that the Appellant touched her vagina on previous occasion. Her mother confirmed her evidence to the extent that they had this discussion whereupon her daughter made the report to her.

[13] Under cross-examination it was put to her that the Appellant denies the allegations and further that her mother told her to make up the story. She maintained, that what she described did happen and that there was no collusion with her mother to falsely implicate the Appellant.

[14] The second complainant EP was ten (10) years old at the time of the incident and 11 (eleven) years old when she gave evidence in court. She confirmed that she was with the first witness, her cousin, when they slept over at the Appellant’s place. She too could not confirm the date. She was asleep and had no independent recollection of the Appellant touching her. The third complainant told her that the Appellant had touched her under the blanket. She woke up the next morning to find her pants pulled down to her knees. She explained that the accused touched her on the place that he should not. In her words, she stated that, “Hy het gepeuter waar hy nie mag nie peuter nie”.

[15] She recalled that her vagina was sore when urinating and that she saw blood. This aspect was disputed under cross-examination as it transpired that it was not

included in her statement to the police. Her response to the discrepancy was that she was afraid. She testified further that the morning after the sleepover she and AL were taking a bath in the bathroom, when the Appellant entered and inserted his finger into her vagina. The Appellant told them not tell anyone and promised to buy them sweets in return. She says that AL saw what had happened. However, AL did not testify either independently or in corroboration about this incident.

[16] She testified that she told her grandfather that the Appellant touched her. The grandfather was called to testify and confirmed that she told him this, but he did not think much of the report because according to him the child had an overactive imagination at times and would tell fabricated stories.

[17] The third complainant, CM testified that she too slept over at the appellant's house that evening when the incident occurred. She was a friend of complainant EP who had invited her to sleep over. She testified that she woke up when the accused was touching her while she was underneath the blankets. The incident occurred on the same night referred to by the previous two witnesses. She testified that the accused touched her vagina whilst she was still fully clothed. His hand was on top of her clothes not inside. She was able to illustrate the place where he touched her with the use of anatomically correct dolls. She pointed to the vagina of the female doll. She testified that she witnessed the Appellant reaching over her to the second complainant EP while she was asleep.

[18] The state also called Cornelia Lutzke who is the mother of AL, the first witness. AL reported the incident to her. In response to the averment that she orchestrated the allegations against the Appellant, she stated that she would never put her daughter through the trauma of the court proceedings simply to get back at the Appellant. The state called Quinton Swanepoel, the grandfather of AL and EP. He confirmed that there were issues between them but that he had no reason to falsely implicate the Appellant.

[19] The state called no further witnesses and the medical reports were handed in by agreement and forms part of the evidentiary material. The report which was completed on 13 December 2016 in respect of the first witness, AL notes no

abnormalities and concludes that, “*child sexual abuse can neither be confirmed nor negated*’. No further medical evidence was presented in respect of the other complainants.

[20] The Appellant’s defence was a bare denial. He avers that the allegations were levelled against him because of a family dispute, which arose between himself and his girlfriend’s family. He alleges that the first two complainants were instigated by their mothers to make the false allegations and that the third complainant was instigated because she is a friend of the first two complainants. They discussed the story and plotted against him because he failed to provide for them financially as he had done in the past.

[21] He maintained his innocence throughout his evidence in chief and cross-examination. He did not dispute that the complainants slept at his home on occasion. He conceded that there was a sleep over in and around the Easter period. Initially he testified that AL slept in the other room with her mother, but later testified that he in fact would not have been there because he was driving long haul trips during that time. Therefore, he would not have been sleeping there at night during that time period and hence the complainants versions cannot be true.

PARTIES’ SUBMISSIONS

[22] Ms Kruger on behalf of the Appellant argued that the court a quo erred in its finding of credibility particularly concerning the second complainant on count 2 and 4. She pointed out that the complainant was asleep and unaware of the alleged sexual assault. Furthermore, AL fails to corroborate her on the allegations contained in count 2. According to EP, AL was present in the bathroom the morning when the Appellant inserted his finger into her vagina. She further argued that the complainants’ evidence should be approached with caution, as they are children and single witnesses to the incidents allegedly perpetrated against them.

[23] Advocate Claassens on behalf of the State argued that there is no evidence to support the Appellant’s averment that he is being falsely implicated. She argued that the complainant’s evidence should be viewed in the light of their ages and the

stressful conditions of having to testify in court. She argued that the contradictions are not material and that it is highly improbable that the complainants would have been told what to say because the details and knowledge of the incidents is not within the realm of knowledge of such young children. She argued that the trial court correctly rejected the Appellant's version on the basis that it was not reasonably possibly true.

EVALUATION OF THE EVIDENCE

[24] The learned magistrate evaluated the credibility of witnesses and found that the contradiction which were highlighted by the defence were not material to the extent that it vitiates the state case in its totality. He took into account their tender age and the daunting task of having to testify in an intimidating environment. The learned magistrate found that the complainant's versions were so similar in their description of the events that occurred that night. The court found that the evidence of the mother and grandfather was not exaggerated and that they were not fabricating the story or part of a vendetta against the accused.

[25] The *court a quo* in this matter specifically remarked that, in spite of their ages, the complainants testified in a clear and logical fashion, and made a good impression on the court. The *court a quo* found that the Appellant did not impress as a credible witness. His version changed on material aspects and he could not provide plausible explanation for the discrepancies.

[26] It is trite law that the evidence of children and single witnesses should be approached with necessary caution due to the inherent dangers. In ***Woji v Santam Insurance Company Ltd***⁵, a civil judgment, the Court stated:

“The question which the trial Court must ask itself is whether the young witness' evidence is trustworthy. Trustworthiness, as is pointed out by Wigmore in his Code of Evidence para 568 at 128, depends on factors such as the child's power of observation, his power of recollection, and

⁵ *Woji v Santam Insurance Company Ltd* 1981 (1) SA 1020 (A) at 1021.

his power of narration on the specific matter to be testified. In each instance the capacity of the particular child is to be investigated. His capacity of observation will depend on whether he appears "intelligent enough to observe". Whether he has the capacity of recollection will depend again on whether he has sufficient years of discretion "to remember what occurs" while the capacity of narration or communication raises the question whether the child has "the capacity to understand the questions put, and to frame and express intelligent answers" (Wigmore on Evidence vol II para 506 at 596). There are other factors as well which the Court will take into account in assessing the child's trustworthiness in the witness box. Does he appear to be honest is there a consciousness of the duty to speak the truth?"

[27] In **Matshivha v S** the court cited with approval the *dicta* of Nugent JA in **S v Vilakazi** where the following was said: -

"From prosecutors it calls for thoughtful preparation, patient and sensitive presentation of all the available evidence, and meticulous attention to detail. From judicial officers who try such cases it calls for accurate understanding and careful analysis of all the evidence."⁶

[28] The complainants 1 and 3 provided much detail of the incident and the first complainant AL gives a vivid account of how she woke up feeling someone touching her. Even though it was dark, she saw the Appellant and even recalled that he was smiling whilst inserting his finger in vagina. The second complainant EP, admits that she was asleep when she was touched by the Appellant and was told what happened by the third complainant. She relayed evidence that the Appellant inserted his finger in her vagina the next morning whilst bathing. The first complainant who was with her in the bath does not corroborate this version, but from the evidence, it appears that the information was not elicited from her either.

⁶ 2014 (1) SACR 29 (SCA) at para 24.

[29] Even though they were sleeping together when the first sexual assaults occurred each were single witnesses as to what happened to them personally. The evidence of single witness is regulated by Section 208 of the Criminal Procedure Act⁷, which provides that an accused may be convicted of any offence on the single evidence of any competent witness. The case law clearly promotes the notion that the exercise of the caution must not be allowed to displace the exercise of common sense. In addition to the single witness rule, the court is further called upon to approach the evidence of the child witness with caution.

[30] In **S v Sauls**⁸ the court expounded on the issue of the creditability of a single witness. It was stated as follows –

“there is no formula to apply when it comes to the consideration of the credibility of a single witness. The trial court should weigh the evidence of a single witness and consider its merits and demerits and having done so should decide whether it is satisfied that the truth have been told, despite the shortcomings or defects or contradictions in the evidence.” (Translation from Afrikaans)

[31] In **State v V**⁹, Zuman JA said as follows:

“in view of the nature of the charges and the ages of the complainants it is well to remind oneself at the outset that while there is no statutory requirement that the child’s evidence must be corroborated it has long been accepted that the evidence of young children should be treated with caution and the evidence in a particular case involving sexual conduct may call for a cautionary approach.”

[32] The complainants did not report the incidents to their parents immediately but for EP who reported to her grandfather, who for some strange reason did not take her seriously until AL spoke out. Only then did the parents take action and reported

⁷ Act 51 of 1977

⁸ 1981 (3) SA 172 (a) to (h)

⁹ 2002 (1) SACR 453 SA 454 (2)

the accused to the authorities. In this regard, section 59 of the Criminal Law Amendment Act¹⁰ specifically precludes the court from drawing a negative inference from the length of delay between the alleged commission of such offence and the reporting thereof. The court a quo dealt with this issue and correctly found that the complainants provided plausible explanations for the delay in reporting the matter. The Appellant told them not to tell anyone and promised a reward of sweets and chocolates. Given their age and the relationship to the Appellant, their actions cannot be viewed as unreasonable or improbable.

[33] The Appellant avers that complaints versions are fabricated as part of a conspiracy against him. This version could potentially have held water if only the two family members accused him of rape. However, the third complainant who has no relation the family also levelled an allegation against him. She would have had no reason to falsely implicate the accused and place herself through the trauma of having to testify in court.

[34] It is trite that in criminal proceedings the Appellant bears no onus to convince the court that he is innocent. The State bears the onus to prove the accused's guilt beyond a reasonable doubt. Furthermore, the accused's version cannot be rejected solely on the basis that it is improbable, but only once the trial court has found on credible evidence that the accused's explanation is false beyond a reasonable doubt.¹¹

[35] In **S v Chabalala**¹² Heher AJA dealt with probabilities as follows:

“The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weigh so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt.”

¹⁰ The Criminal Law amendment act 32 of 2007

¹¹ S v V 2000 (1) SACR 453 (SCA) at 455B.)

¹² 2003 (1) SACR 134 (SCA) para 15; and also S v V 2000 (1) SACR 453 (SCA) at 455a - c

[36] The Appellant was well known to the complainants, so identity is not in dispute and neither is the fact that the complainants had on more than one occasion slept over at his house. The exact date of the incident was not determined with certainty but it is clear that it occurred in and around the Easter period of 2016. What remains in dispute is whether the appellant perpetrated the rape and sexual assault as alleged by the state.

[37] It is evident from the record that the Appellant was an unimpressive witness and contradicted himself on material aspects. His version was inherently improbable to the extent that it cannot be accepted as reasonably possibly true. I am of the view that the *court a quo* correctly rejected the Appellant's version as false.

[38] Having considered the evidence and arguments carefully and I am satisfied that this court should not interfere with the trial court's findings in respect of count 1 and 3. The Appellant failed to show that such findings were vitiated by material misdirection or that the record indicates the commission of mistakes.

[39] However, the position is somewhat different with regards to count 2 and 4 which relates to the same complainant EP. The trial court approached the evaluation of the evidence of the complainants collectively. He did not deal with each complainant's evidence individually. These are independent events. The learned magistrate acknowledged that the evidence of the complainant should be approached with caution due to her tender age as well as the fact she was a single witness.

[40] The learned magistrate stated in his judgment that , "although all three complainants are all single witnesses as well as child witnesses in respect of their ordeals , substantial corroboration can be found for the evidence placed on record by these three child witness in their different version of what happened". Ms Kruger, on behalf of the Appellant argued that EP (complainant 2) was asleep when the alleged sexual assault occurred and was told by complainant 3 that the Appellant had touched her. She further argued that the complainant's evidence in respect of count 4 only emerged during consultation with the complainant. The alleged rape is not

mentioned in her statement and was further not corroborated by AL complainant 1, who according to her was present when the incident occurred.

[41] The State conceded that the evidence in respect of count 2 was hanging on a thread and not well supported or corroborated because the complainant was not asked to explain the contradiction between her statement and evidence. During her evidence, she stated that her pyjamas pants was pulled down to her knees when she woke up the next morning whereas in her statement, she stated that her pyjamas was normal. This discrepancy was not clarified in her evidence either.

[42] The evidence of complainant 2, EP is not clear in every respect. Complainant 1, AL does not corroborate her evidence concerning the rape in count 4. In addition, discrepancies were highlighted in her statement to the police and her evidence in court. Material contradictions emerge which affects the creditability and reliability of her evidence. The state referred to the **S v Mafaladiso**¹³ where the court warned that the discrepancy between different versions should be approached with circumspection. In that matter the court held that:

“The different versions must be evaluated holistically. The evaluation includes the circumstances in which the versions were given, reasons for the discrepancies, the effect of the discrepancies on the witness’s creditability and whether the witness had sufficient opportunity to explain the discrepancies. Lastly, the witness statement to the police must be weighed up against the witness’s viva voce evidence. The discrepancies and contradictions were further not explained by the witness.”

[43] The complainant EP, failed to provide satisfactory explanations for the discrepancies and contradictions, which emerged from her evidence and her statement to the police. The omission of the rape allegation as set out in count 4 in her statement is glaring and amounts to a material discrepancy when evaluating the totality of her evidence. The allegations were serious and the state should have made greater effort to elicit the evidence from the first complainant to corroborate her

¹³ 2003 (1) SACR 583 (SCA).

evidence. The state did not produce any medical evidence to corroborate the complainant's evidence in support of the rape. Material contradictions emerge which affect the creditability and reliability of her evidence.

[44] The trial court clearly erred in its application of the cautionary rule with regards to the complainant's evidence in respect of count 2 and 4. The learned magistrate failed to address the glaring discrepancies in their evidence. In as much as the offences relate to the incident, which occurred on the same weekend, the learned magistrate should have evaluated the quality of the evidence of the 3 complainants individually. Instead, the trial court approached the evidence of the three complainants as a collective and found that "the version of the witnesses at the scene were similar and that the contradictions were of a trivial nature".

[45] The learned magistrate reasoned that it would highly improbable that the parents would have told the complainants what to say in order to falsely incriminate the Appellant. This may be true but honesty and probability is not the only requirement for a court to find that the evidence of a single, child witness is satisfactory in all material respects. In light of the discrepancies and contradictions there should have been corroboration and at most a reasonable explanation for discrepancies.

[46] The contradictions in the evidence of Complainant 2 in respect of count 2 and 4 were glaring and the trial courts finding that it was trivial was incorrect. The trial court was clearly misdirected when making the finding regarding the reliability and creditability of the evidence of Complaint 2 in respect of count 2 and 4. The convictions and resultant sentences cannot stand.

SENTENCE IMPOSED

[47] I now turn my attention to the issue of sentencing in respect of the remaining counts 1 and 3. The *court a quo*, in considering an appropriate sentence took into account, *inter alia*, the triad that is the purpose of punishment and the traditional aims of punishment, which include deterrence, reformation and retribution. Leading

authorities were referenced such as **S v Zinn**¹⁴ and **S v Thonga**.¹⁵ That is an indication that the *court a quo* was alive in ensuring the equilibrium that is necessary when striking a balance between the competing factors of the triad.¹⁶

[48] The Appellant's conviction was subject to the prescribed minimum sentences of life imprisonment on counts 1 as prescribed in Section 51(1) of the Criminal Law Amendment Act.¹⁷ However, in terms of Section 51(3), the court may deviate from the prescribed minimum sentences if there are substantial and compelling circumstances justifying such deviation.

[49] Having considered the fundamental sentencing guidelines and the applicable authority the trial court found that there were substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence of life imprisonment in respect of count 1. The trial court found that the manner in which the penetration occurred on the rape counts were not as severe as with "full intercourse" as he termed it. He also took into account that the appellant was a first offender. I am not in full agreement with his finding that the digital penetration is not a serious a rape as with penetration with a penis. I however accept that the learned magistrate in his attempt to substantiate the deviation from the prescribed minimum sentence was trying to highlight that the penetration could have been worse if the Appellant had used his penis.

[50] The Appellant's personal circumstances were unremarkable but he could be regarded as relatively young and is a first offender. Mrs Kruger submitted that the sentences imposed by the *court a quo* are disproportionate and argued that at best the court should have ordered that all the sentences run concurrently.

[51] However, the court should not lose sight of the fact that there are two very young complainants impacted by the accused actions. The incident have affected them emotionally in one way or another. They have been robbed of their innocence and violated at such a young age.

¹⁴ 1969 (2) SA 537 (A),

¹⁵ 1993 (1) SA 537 (A)

¹⁶ S Zinn

¹⁷ Criminal Law Amendment Act 105 of 1997

[52] Communities and the Country as a whole are outraged by the prevailing sexual abuse perpetrated against women and children in particular. There is a legitimate expectation that the courts must impose sentences, which reflect the seriousness of this crime. The courts have recognised this scourge and expressed outrage as illustrated in the well-known matter of ***S v Chapman***.¹⁸

[53] It is trite law that a court of appeal will not lightly interfere with an imposed sentence. The powers of the court of appeal are relatively limited to those instances where the sentence is vitiated by misdirection or where the sentence imposed is startlingly inappropriate and induces a sense of shock or where there is a striking disparity between the sentence imposed, and that which a court of appeal would impose.

[54] The trial court gave due cognisance to the circumstances surrounding the offence as well as the appellants personal circumstances. The court was mindful of the discretion afforded in the ***S v Malgas***¹⁹ decision to the effect that the sentencing court must independently apply its mind to the question whether the prescribed sentence is proportionate to the crime. If the prescribed sentence is not proportionate then substantial and compelling circumstances as contemplated in section 51(3) Act 105 of 1997 exist. The trial court displayed mercy and imposed a sentence significantly less than the prescribed minimum sentence. I therefore do not find that the sentence imposed by the trial court is startlingly inappropriate or induces a sense of shock.

CONCLUSION

[55] I therefore conclude that insufficient reasons have been advanced for the court of appeal to interfere with the convictions and sentences in respect of count 1 and 3. Undoubtedly the convictions and sentences on count 2 and 4 that have been dismissed will have a bearing on the effective sentence to be served by the

¹⁸ 1997 (2) SACR 3 (SCA) paras 3 & 4

¹⁹ 2001 SACR 469 SCA

Appellant. The conclusion that the sentences must be served concurrently is based on sound reasoning. I do not intend to temper with it.

ORDERS

[56] I propose the following orders:

56.1. The appeal in respect of convictions on count 2 and 4 is upheld and the convictions and resultant sentences are set aside.

56.2.

56.2.1. The appeal against the convictions on count 1 and 3 is dismissed.

56.2.2. The sentence of ten (10) years imprisonment in respect of count 1 is confirmed.

56.2.3. The sentence in respect of count 3 is set aside and replaced with five (5) years imprisonment.

56.2.4. In terms of section 280(2) of the Criminal Procedure Act 51 of 1977 the sentence on count 3 shall be served concurrently with the sentence of ten (10) years imprisonment imposed on count 1. The effective term of imprisonment is ten (10) years.

56.3. The order in terms of section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007 is confirmed.

56.4. The order in terms of section 103 of the Firearms Control Act 60 of 2000 is confirmed.

56.5. The sentence is antedated to 15 March 2018.

A. RAMOS AJ

I concur and it is so ordered

M.A. MATHEBULA J

On behalf of the Appellant: S. Kruger
Instructed by: Legal Aid SA
BLOEMFONTEIN LOCAL OFFICE

On behalf of the Respondent: Adv B.G. Claassens
Instructed by: Office of the DPP, Free State
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