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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case Number: CC44/2020

In the matter between:

THE STATE

and

DERICK KALMEYER

**SENTENCE JUDGMENT
DELIVERED ON 24 JUNE 2024**

ANDREWS, AJ

Introduction

[1] Mr. Derick Kalmeyer ("the accused") was found guilty of assault with intent to do grievous bodily harm, two counts of murder read with the provisions of Section

51(1) of the Criminal Law Amendment Act, No. 105 of 1977, as amended and one count of contravening Section 67(1)(a) read with Section 1 of the South African Police Service Act 68 of 1995, to wit, resisting arrest.

[2] The provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1977 is applicable to counts 3 and 4 which carries a minimum sentence of life imprisonment in respect of murder as listed in Part I of Schedule 2 to wit where the murder was planned or premeditated.

[3] In terms of Section 276 of the Criminal Procedure Act the court is cloaked with inherent jurisdiction which empowers this court to impose life imprisonment

[4] In respect of Count 5, resisting arrest, in terms Section 51 of the CPA read with Section 117 of the Correctional Services Act is a fine or incarceration for a period not exceeding ten years or to imprisonment without the option of a fine or both.

[5] In determining a fair, just and proportionate sentence, a court should have regard to and be mindful of the foundational sentencing principles that the punishment should fit the crime, as well as the criminal, be fair to society and be blended with the element of mercy as enunciated in **S v Rabie**¹.

[6] It is against this backdrop that this court now considers the principles applicable in maintaining a fair and balanced sentence as well as the general approach to the imposition of suitable sentences.

Aims of punishment

[7] In determining an appropriate sentence, it is trite law that the court should bear the main objectives of criminal punishment in mind, which are deterrent; preventative, reformatory and retributive.² In **S v Mhlakaza**³ the Supreme Court of

¹ 1975 (4) SA 855 (A) at 862G – H.

² *S v Swanepoel* 1945 AD at 455; See also *S v Rabie* 1975 (4) SA 855 (A) 862A – B; *S v Scott-Crossley* [2007] ZASCA 127; 2008 (1) SA 404 (SCA); 2008 (1) SACR 223 (SCA) at 35 ‘...any

Appeal, per Harms JA, held that the object of sentencing is not to satisfy public opinion but to serve public interest. A sentencing policy that predominantly caters, or exclusively caters for public opinion, is inherently flawed. The court noted that it remains the court's duty to impose fearless an appropriate and fair sentence even if the sentence does not satisfy the public.

The triad

[8] It is an established legal principle that the courts must impose sentences that are proportionate to the gravity of the offence and take into account the degree of responsibility of the offender. In sentencing the accused, the court is to have regard to the **Zinn** triad which comprises of the nature and seriousness of the offences, the personal circumstances of the accused as well as the interest of society.⁴ In **S v Qamata**⁵, it was held that an appropriate sentence actually means a sentence which is in accordance with the blameworthiness of every individual offender. The punitive sanction should be appropriate in severity to the degree of blameworthiness or the seriousness of the conduct. It is therefore imperative for the court to strike a balance in the three elements. The court is aware that equal weight must be attached to these traditional factors stated in **Zinn** (*supra*) and that the court should be cautious not to attach undue weight to one factor and overlook, the other factors to the detriment of the accused or society as was aptly stated by Friedman J, in **S v Banda**⁶

'The elements of the triad contain an equilibrium and a tension. A court should when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of others. What is necessary is that the Court shall consider, and try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and

sentence imposes must have deterrent and retributive force. But of course, one must not sacrifice an accused person at the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishment, they are not the only ones, for that matter, even the overriding ones.'

³ 1997 (1) SACR 515 (SCA).

⁴ S v Zinn 1969 (2) SA 537 (A).

⁵ 1997 (1) SACR 479 at 483.

⁶ 1991 (2) SA 352 (BGD) at 355A – B.

his circumstances and the impact of the crime on the community; its welfare and concern.'

Exhibits

[9] The following Exhibits were received into evidence during the sentencing proceedings namely:

- (a) DNA Report – Exhibit “G”;
- (b) SAP 69’s – Exhibit “H”;
- (c) Probation Officer’s Report – Exhibit “J”;
- (d) Victim Impact Statement – F[...] A[...], - Exhibit “K”;
- (e) Victim Impact Statement – D[...] A[...], - Exhibit “L”;
- (f) Victim Impact Statement – Maria Fienis, - Exhibit “M”.

Previous Convictions

[10] The following previous convictions proven against Mr Kalmeyer namely:

24/12/1985	2 counts of Malicious injury to property	Corporal punishment – caning – 6 lashes
27/12/1988	Assault with intent to do grievous bodily harm	6 months imprisonment wholly suspended for a period of 5 years and R200 compensation
19/09/1989		The suspended sentence of 20 /02 1989 was put into

		operation
17/08/1989	Possession of dangerous weapon	Fine 80- or 40-days imprisonment
06/07/1989	Assault with intent to do grievous bodily harm	Corporal punishment Caning – 6 lashes
08/09/1989	Dumping – contravention of the local authorities Act	Fine R100 or 50 days imprisonment
18/09/1990	2 Counts of Malicious Damage to Property	6 months imprisonment on each count – Ordered that the sentences run concurrently with each other.
23/09/1991	Assault with intent to do grievous bodily harm.	180 days imprisonment suspended for a period of 5 years with conditions.
25/07/1995		The sentence imposed on 23/09/1991 was put into operation
09/01/1992	2 counts of malicious damage to property	Both counts taken together for the purpose of sentencing – 6 months imprisonment suspended for a period of 4 years on conditions. In addition – R259 for compensation.
09/01/1992	Assault with intent to do grievous bodily harm	4 months imprisonment suspended for a period of 4 years on conditions.
09/01/1992	2 counts of malicious injury to property	Both counts taken together for the purpose of sentence – 6 months imprisonment wholly suspended for a period of 4 years on conditions.

04/02/1992		The sentence imposed on 09/01/1992 put into operation
20/10/1992	Assault	Admission of guilty fine R50
02/11/1992	Assault with intent to do grievous bodily harm	4 months imprisonment wholly suspended for a period of 3 years on conditions.
25/07/1995		Putting into operation suspended sentence imposed on 02/12/1992
03/06/1993	Malicious damage to property	Fine R400 or 200 days imprisonment wholly suspended for a period of 3 years. In addition, R200 compensation
25/07/1995	Assault with intent to do grievous bodily harm	1-year imprisonment
25/07/1995	Contempt of Court	60 days imprisonment
21/01/1999	Escaping or attempting to escape	8 months imprisonment
10/03/1999	Breach of Peace	Fined R100 or 25 days imprisonment. Sentence ordered to run concurrently with the sentence he was serving at the time.
26/10/2000	Assault with intent to do grievous bodily harm	8 years imprisonment
20/06/2000	Malicious damage to property	3 years imprisonment
		On 21/02/2008 – released on parole supervision until 20/07/2009
24/01/2012	• Malicious damage to	All charges were taken

	property Assault with intent to do grievous bodily harm [not clear if it was 2 counts on each charge as it was duplicated with the date of commission of the offences being the same date]	together for the purpose of sentencing – 12 years imprisonment. Accused warned in terms of Section 286(1) of Act 51 of 1977.
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[11] The accused admitted these previous convictions after placing certain entries on the SAP 69 in dispute.

[12] In terms Section 271B(1) of the Criminal Procedure Act you can apply to have your criminal record expunged if it has been 10 years since the date of your conviction and 5 years if you were 18 years and younger at the time. In this regard, it is evident that most of the previous convictions were committed while the accused was under the age of 18 years and therefore Section 87 of the Child Justice Act becomes relevant. In terms of Section 271A of the Criminal Procedure Act, a previous conviction if a period of 10 years has elapsed after the date of conviction falls away if certain conditions are met as set out in the provision.

[13] The accused's last brush with the law was seemingly in 2012 for which he was sentenced to 12 years imprisonment. However, if regard is had to the date of the commission of these offences *in casu* namely 1 May 2019, there was a gap of approximately 7 years. This therefore, means that the accused had committed these offences whilst out on parole as he did not serve the full 12 years imprisonment.

DNA Results

[14] The DNA results reflected the following:

- (a) the genetic material found on the “window frame wall”, from the wall by the front door matched the reference sample of C[...];
- (b) Unknown male DNA was obtained from the possible blood on top [“6”];
- (c) No DNA result was obtained from the possible high friction from knife [“2”].

[15] It bears mentioning that no reference sample was taken from the accused.

The Evidence

[16] The Defence indicated that they wished to cross-examine the Probation Officer on the content of his report. Mr **Errol Daniel Pietersen** was called to testify. He placed his qualifications and experience on record. He also confirmed his sources of information, namely the accused, Mrs Maria Fienis, the accused sister, Mr Riaan Fienis, the accused’s brother – in – law, Ms S[...] J[...], a previous victim of the accused who was the complainant in an attempted murder matter under Vredenburg CAS 108/8/2010, the file content as well as the accused’s SAP 69’s.

[17] Mr Pietersen testified that, it appears that the accused dropped out of school at the age of 16 years and started working in construction. The accused was for the most part, casually employed. He struggled at school and made himself guilty of recalcitrant behaviour showing a lack of interest. In this regard, Mr Pietersen indicated that he often got into trouble at school by misbehaving and not respecting authority. The accused was expelled from school and sent to live with family in Atlantis with a view to him resuming his schooling there, but it appears that the accused got into trouble there as well. He placed on record that the accused was not drug dependent.

[18] The accused has no obvious indication of physical or psychological defects. Mr Pieterse explained that the accused himself admitted to him that his behaviour has been difficult since his early teens, which was also confirmed by the accused’s sister. The accused is a self-confessed member of the 28’s gang. When probed about his affiliation with the gang, and the normal trajectory whether he wouldn’t like

to put an end to this lifestyle, the accused informed Mr Pietersen that he is being treated well inside prison. The accused gave him the impression that he was okay to be in prison, although he would prefer to be outside.

[19] Mr Pieterse opined that the accused has a positive attitude towards crime and remarked **“I DO NOT BELIEVE THE OFFENDER CAN BE REHABILITATED...I CONTEND THAT THE OFFENDER PRESENTS A CLEAR DANGER TO SOCIETY.”**

[20] Mr Pieterse testified that the family of the deceased children remain traumatised. They experience sleeplessness. When interviewed by Mr Pieterse, they appeared outraged and angered as they shared the account of what happened. This event has made them hyper vigilant in respect of the other children as they constantly worry. He explicated that they go into what he termed to be over-drive to determine where the other children are.

[21] The accused has also caused much embarrassment to his own family through what he did. The accused own sister feels victimised by the community which has caused her to withdraw into herself

[22] Mr Pieterse opined that if regard is to be had to the accused's criminal history; and that he does not suffer from mental deficit; in other words, he was in full control of his faculties, the only appropriate sanction would be to impose the maximum penalty.

On behalf of the accused

[23] Counsel on behalf of the accused prepared heads of argument in mitigation of sentence. The Heads of Argument addressed the factors which courts are to consider when considering an appropriate sentence, with a sharp focus on the aims of punishment insofar as it pertains to deterrence and retribution. The Heads of Argument also addressed various other factors, which were argued would constitute substantial and compelling circumstances in support of the contention that the court should deviate from imposing the prescribed minimum sentence.

[24] It was argued that the state failed to prove that the accused is beyond rehabilitation and reformation. In this regard, it was contended that the accused, when he was released from prison, he did construction work and entered into a romantic relationship and with F[...] A[...]. He cared for her children as a father figure buying diapers and milk, which is indicative of his attempt to rehabilitate himself.

[25] Counsel on behalf of the accused submitted that the court is to adopt a wholistic approach and not just send the accused off to prison in circumstances when there is a chance that he is capable of rehabilitation and become a productive member of society. Counsel for the accused suggested that a cumulative period of 22 years imprisonment would be appropriate in the circumstances of his matter, taking into account further the time already spent awaiting trial.

On behalf of the state

[26] Heads of Argument were prepared by the state. In this regard, submissions were made regarding the trite applicable considerations to sentencing; the nature and seriousness of the crimes, the interest of the community. In the state's address the scourge of child murders plaguing the Western Cape and South Africa as a whole was highlighted.

[27] It was contended that no substantial and compelling circumstances exists to warrant a deviation from the prescribed minimum sentence of life imprisonment. It was further argued that the criminal activities of the accused followed an upward trajectory to the most serious of violent crimes, namely the taking of the life of another. It was furthermore submitted that although the accused appears to be committing crimes habitually, the court is to invoke its inherent jurisdiction and the applicable minimum sentence.

Personal Circumstances of the Accused

[28] The personal circumstances of the accused, is encapsulated in the Probation Officer's Report. The salient aspects thereof include that he is currently 54

years old. He is unmarried and is the father of two children, one of whom is predeceased. His surviving daughter resides with her biological mother is Graaf Reinet. The accused has no contact with her. Prior to his incarceration, the accused worked for a construction company for a period of 6 months. He progressed scholastically to grade 7. Prior to his incarceration, the accused resided in a Wendy House on the property with his sister and her family. The accused shared this Wendy house with F[...] A[...], with whom he had a romantic relationship, and her two children.

[29] It is trite law that in passing sentence the personal circumstances of the accused must be considered carefully, not only in so far as they led to the act, but also to the extent that the intended punishment will affect the accused personally. The personal circumstances of the accused are also important considerations in determining the appropriateness of a suitable sentence. Moreover, it must be considered in order to determine the extent to which his life and that of his family in future will be affected by the imposition of a prescribed minimum sentence for example. I deal with later in this judgment when discuss the minimum sentencing regime.

[30] It has to be recognised that the circumstances of this matter call for an approach that deals firmly with the offenders, who were convicted of very serious offences. It must however, be balanced against safeguarding the interests and preserving the rights of society. It is incumbent to have due regard to the nature, the circumstances and motivation for the commission of the offences, but also give due consideration to the personal circumstances of the accused.

[31] During cross-examination of Mr Pietersen it came to light that the accused was 12 years old when his father passed away. He conceded that the death of a father at that young age may potentially have a negative impact as there would be the absence of a positive father role model. This, Mr Pietersen conceded, may possibly have impacted on the subsequent problems that the accused displayed with authority.

[32] The punishment meted out when he first came into conflict with the law, being corporal punishment (lashes), such punishment would today be regarded as cruel and unusual punishment. Mr Pietersen conceded that receiving such punishment would also be degrading. He further conceded that it could probably have sent out a wrong signal to young people that violence is an acceptable way of dealing with problems.

[33] Mr Pietersen agreed that if there was proper intervention at the time it may have had a positive effect on the accused. Interventions could have been through the education system, or counselling by a social worker to the accused when he was at the tender age of 16 years old. Mr Pietersen agreed that the age category of 12 – 16 years were critical. He conceded that the accused may have been failed by society and by the state at the time.

[34] As a child in conflict with the law, mediations and diversions would have been probable outcomes for the types of offences he was found guilty on. These alternatives for younger offenders may have given the accused a more positive approach than to sanction him to the criminal justice system. Even community service may have yielded better outcomes and awareness. It was suggested that because the accused was young, he pleaded guilty and had no legal representation, deprived him of the benefit of mediation or diversion.

[35] It was suggested by Counsel for the accused to Mr Pietersen that there were signs of the accused's attempt to walk the proverbial straight and narrow as he found employment, entered into a committed relationship with the mother of the children and in fact performed the role of father figure for them. Mr Pietersen indicated that he had difficulty answering that question as although the accused demonstrated that pattern of behaviour, same was juxtaposed with the opposite behaviour. Mr Pietersen conceded that the accused was caring towards the children.

[36] Counsel for the accused put it to Mr Pietersen that the accused is compelled to align with the gang system in prison for his safety. Mr Pieterse could not comment on the accused's affiliation to any gang outside of prison.

The victims

[37] The Victim Impact Report as encapsulated in the Probation Officer Report is worth restating as it captures the devastating impact of the harrowing events of that fateful night when F[...] and C[...]’s lives were senselessly ended in the most heinous way possible:

‘The family of the two murdered children understandably continue to suffer as a result of the untimely death of the two children. Despite being aware of the offender’s proclivity towards criminality and violence, that he had taken the life of the two children, especially of such a very young age struck the family completely off guard.

Her surprise is further fuelled by the fact that she had known the offender for most of her life, he had visited their home and had always treated her parents with the utmost respect. Not only has it left her as well as the rest of the family in shock, but they suffer despair, dismay, disbelief and outrage. They struggled to comprehend how anyone, especially someone whom they permitted into their home and who was in a seemingly caring relationship with their daughter capable of perpetrating such an unbelievably callous act.

They had no reason to imagine or suspect that he would harm them in any way as he had treated the children with affection and care. Throughout the interview with the mother, she had been tearful and melancholy and struggled to contain her emotions. She proclaimed that her heart is shattered and that she hopes to wake from the nightmare which continues to fill her with revulsion and anger and the yearning to have her children back in her arms.

Not only do the family struggle to process the death of the children, but they remain incensed at the offender’s lack of remorse, as he had never apologised to them; refuses to admit to the offence and at times taunted them when he sees them at court.

The mother and the rest of the family continue to struggle to sleep. Since the death of the children, they have become hyper aware of their surroundings and overprotective of the other children in the home.”

[38] In Mr Pietersen’s view, the family is suffering from Post-Traumatic Stress Disorder. It was further placed on record that substantial services were already rendered to F[...] A[...]. Mr Pietersen indicated that he would be able to refer the other family members for counselling as well.

[39] Inasmuch as Mr Pietersen encapsulated the impact of these incidences there are also further additional striking consequences worth mentioning:

Victim Impact Statement – F[...] A[...]

[40] The devastating trauma of that fateful evening has caused Ms A[...] to have suicidal thoughts. She relives the shock and horror of that harrowing ordeal daily, experiencing nightmares. To numb the pain, she has fallen back into using drugs to such an extent that she sold her parents belongings to support her drug habit. She imagines hearing C[...] and F[...]’s cries constantly. She misses her children dearly and finds it difficult to move on with life; C[...] and F[...] are constantly in her thoughts and on her mind. She wonders how they would have been like now, attending school, a privilege she was not given to share future milestones with them.

Victim Impact Statement – D[...] A[...]

[41] Mrs D[...] A[...], described the scene she arrived to when she came over to the house on the day of the incident. She narrated how emotional she became she saw the children lying on the floor and how C[...] cried out to his grandpa “**DADDA**” when he saw him. At that stage, little F[...] had was already deceased, lying on the **COLD TILES** on the floor. She described how it broke her to see this scene. The horror of that scene continues to cause her not to be able to sleep. The death of these 2 children has had a significant impact on the household. To this end, they have become almost paranoid about the other children, being hyper vigilant, not leaving them out of sight. She expressed that she will never be able to forget what

happened. Despite the fact that she went for psychological treatment, she feels it hasn't helped her.

[42] She described her observations on how this incident has affected F[...]. Mrs D[...] A[...] explained that F[...] is not the same; she roams around the streets aimlessly and have become more drug dependent than she was before, to the point where F[...] sold their household goods to support her drug dependency.

Victim Impact Statement – Maria Fienis

[43] Maria Fienis is the sister of the accused. She provided a victim impact statement which she attested to under oath and was received into evidence as an exhibit without any challenge. This statement is particularly telling as she expresses how shocked she was when she saw the two children. She stated that she feels embarrassed as this incident has had a negative impact for her and her own children. She received psychological treatment. She stated that her own children cannot sleep and have nightmares. She explicated that she and her daughter were on medication to help them sleep. She further explained that for about a month after the incident, she cried herself to sleep every night. She gets flashbacks. The trauma has impacted her to the extent that there were times that she was booked off on sick leave. The incident has had a negative impact on her work.

[44] Mrs Fienis explained that they loved F[...] and C[...] very much. What is telling is that she stated: **“IT WAS A EMBARRASSEMENT FOR ME THAT MY OWN BROTHER WAS THE OFFENDER. I WAS FEELING HURT...FOR ME THAT KIDS DON'T DESERVE IT. THEY WAS SO CUTE AND LOVELY KIDS. THEY WAS SO SMALL”**.

Remorse

[45] It is trite that remorse is generally used as a factor to determine an accused's ability to be susceptible to rehabilitation and reform.⁷ It was argued that

⁷ See *S v Ntuli* 1978 (1) SA 523 (A) at 528B – C.

the absence of remorse should not be considered as an aggravating factor. In further amplification reference to **S v Mbatha**⁸ was made where the court promotes not treating an alleged lack of remorse as an aggravating factor because it conflicts with an accused's constitutional right to put forward a defence and to remain silent.

[46] In **S v D**⁹ it was held that remorse is a gnawing pain of conscience for the plight of another and that genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. This was not evident when the defence addressed the court in mitigation of sentence, however, it was raised with Mr Pietersen during cross-examination where the process of remorse through programmes can be achieved over time and that a demonstration of remorse is not an overnight process. Mr Pietersen responded that whilst those programmes are available they are only valuable if someone is capable of change. According to Mr Pieterse, the accused had the benefit over years but it did not yield any effect...in this instance, after 5 years there is **NO REMORSE, NO SHAME AND NO GUILTY**.

[47] The accused has failed to fully take the court in his confidence. The accused continues to maintain his innocence. In **S v Matyityi**¹⁰ it was stated that:

'There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not, without more translate to genuine remorse... Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness and contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he

⁸ 2009 (2) SA 623 (KZP) at 30 – 31.

⁹ 1995 (1) SACR 259 (A) at 261a-c.

¹⁰ 2011 (1) SACR 40 (SCA) at para 13.

or she does indeed have a true appreciation of the consequences of those actions.'

[48] The court still has no sense of whether the accused does indeed have a true appreciation of the consequences of his actions. To this end, the letter written shortly after the incidents to the mother of F[...] A[...], dated 22 June 2019, Exhibit "C", may have been the accused's way of apologising without actually admitting in so many words to the crimes. In this letter he expressed his love to F[...] A[...] and encourages her to be strong and to look after herself. He further states: "Ek weet dat ek haar diep seergemaak het, maar ek sal vir haar om vergifnis vra die dag as ek haar deur die glasvenster sal sien..."

[49] What the accused did is however irreconcilable with his declaration of love for F[...] A[...]. His vicious attack on her and the children is by no means an expression of love but rather a demonstration of control, dominance, destruction, cruelty and manipulation. It is by all accounts the most brutal demonstration of Domestic Violence, at a time when domestic violence has been labelled as a pandemic. There can be no other hurt imaginable than killing what every mother holds dear, her children.

[50] Remorse is usually a factor that may sway a sentencing court to be merciful. Without an act of genuine contrition, the conclusion reached by the Probation Officer appears apt, who scribed that the accused's insistence to profess his innocence as demonstrative that he shows no remorse which "can only lead one to conclude that he is heartless and therefore not deserving of sympathy".

[51] When Mr Pietersen was asked whether rehabilitation is not realistic he responded: **"HE CANNOT BE REHABILITATED...NOTHING WILL DETER MR KALMEYER FROM COMMITTING OFFENCES"**

[52] When it was put to Mr Pietersen by Counsel for the accused that there was still "valuable human material left in Mr Kalmeyer" his response was **"I DO NOT AGREE...THROUGHOUT MY INTERACTION WITH THE OFFENDER THERE WAS ON ONE IOTA OF REMORSE... THE FAMILY OF THE CHILDREN**

REPORTED THAT HE TAUNTED THEM...SAME BEHAVIOUR HE DISPLAYED TOWARDS THE FAMILY OF MS J[...] WHOM HE ATTACKED PREVIOUSLY”

[53] Mr Pieterse ended off with these profound words: **“IT IS THE EFFORT TO AFFECT CHANGE BUT CHANGE COMES FROM INSIDE”**

Mercy

[54] The court is mindful of its duty to keep the element of mercy in mind and that the firmness of the sentence must be blended with mercy as stated in **S v Rabie**¹¹.

[55] This concept of mercy, and its interplay with other considerations in sentencing, including the aims of punishment and the *Zinn*-triad, were also considered in **S v Nteta & others**¹². The court is alive to the fact that a wrongdoer must not be visited with punishment to the point of being broken and while justice must be done, mercy, not a sledgehammer must be its concomitant.

The seriousness of the offences

[56] The serious nature of an offence plays an important role in determining the appropriateness of a sentence. Our country is plagued with violent offences and we live in a society, which is becoming increasingly lawless. The seriousness of the crime depends upon the outlook of society, the indignation with which the crime is held in the eyes of society, in other words, the more repugnant a crime is in the eyes of society, the more public outrage is elicited and the greater the punishment should ideally be.

¹¹ 1975 (4) SA 855 (A) at para 862D – F, where Holmes JA stated: ‘(i) *It is a balanced and humane state of thought.*

(ii) *It tempers one's approach to the factors to be considered in arriving at an appropriate sentence.*

(iii) *It has nothing in common with maudlin sympathy for the accused.*

(iv) *It recognises that fair punishment may sometimes have to be robust.*

(v) *It eschews insensitive censoriousness in sentencing a fellow mortal, and so avoids severity in anger.*

(vi) *The measure of the scope of mercy depends upon the circumstances of each case.’*

¹² 2016 (2) SACR 641 (WCC).

[57] It was held in **S v WV**¹³ that:

'It is the kind of sentence which we impose that will drive ordinary members of our society either to have confidence or to lose confidence in the judicial system...The sentences that our courts impose when offences of this nature are committed, should strive to ensure that people are not driven to take the law into their own hands...'

[58] The accused has been found guilty of very serious offences. In respect of count 1, had it not been for the intervention of Ms A[...], Ms O[...] and Mrs Fienis, the consequences could have been dire. The accused intended to cause grievous bodily harm; wielding an iron object and declaring that he would kill Ms A[...] and the children. His own sister had to physically kick the door of the Wendy house open which allowed Ms A[...] and Ms O[...] to escape the accused's wrath. Unfortunately, little F[...] and C[...] wasn't spared.

[59] It was also highlighted in my judgment on conviction that the rage displayed by the accused had to have been so bad that Ms A[...] and Ms O[...] did not only flee to safety, they were locked and hidden in the bedroom and Ms A[...]; Ms A[...] in the wardrobe in the bedroom. The door of the main house was also locked. This corroborated by the fact that the accused knocked on the door, and even when he enquired, he was told Ms A[...] wasn't there. This was clearly done to protect Ms A[...] from the accused. What followed was the propelling of C[...] who had already sustained multiple knife wounds, through the glass window of the living room.

[60] When Ms A[...] was eventually let out of the room she walked into the most devastating consequence and I suppose a mother's worst nightmare, seeing her 18-month-old in pain lying amongst shards of glass and then seeing the lifeless body of F[...] being carried in by the accused's sister.

[61] According to Dr Scherman, the body of three (3) year old F[...] sustained 19 incised wounds of which some were penetrating;11 wounds on the right arm could

¹³ 2013 SACR 204 GNP.

have been defensive wounds. All the wounds were caused by sharp force trauma inflicted by a knife or any sharp object. Little F[...] was declared dead on scene and stood absolutely no chance against the violent anger of her assailant, which the court found, could have been none other but the accused.

[62] As was pointed out by the state, F[...] had to be aware that she was being hurt which is evident from the defensive wounds as she was brutally attacked by the accused; the very person that fulfilled the role of father-figure to her. It is unfathomable that the accused would take out his anger on this 3-year-old child. Repeatedly bludgeoning her little body with a knife no fewer than 19 times.

[63] The little body of 18-month-old C[...], according to Dr Scherman, sustained 14 wounds, with 5 defensive wounds on the left arm. She explicated that 13 of the wounds were sharp force trauma and 1 was caused by blunt force trauma to the head, caused by him being hit by a beer bottle and/or then thrown through the window of the main house. Dr Scherman explained that it was very upsetting to examine the two bodies of 2 young children and opined that whoever is responsible for their death “**It was overkill**”. A 3-year-old toddler and an 18-month-old baby could not have defended themselves.

[64] **Denise Verna Thompson** stated that she reported to her manager that they were too traumatised to continue working and counselling was provided for them.

[65] The accused failed to give himself up and resisted arrest despite **Sergeant Marchell Anthony Petré Fortuin** (“Sgt Fortuin”), being was dressed in full police uniform. He tried to hit him with an iron object, wrestled with Sgt Fortuin and only when teargas was used, did they manage to subdue the accused and place him under arrest. The accused by no means made it easy for the police to place him under arrest.

[66] The evidence on record described the scene as being chaotic, with community members already being present prior to the police arrival to effect the arrest of the accused. In this regard it was contended by Counsel on behalf of the accused that the court is to have regard to the fact that there was a community

uproar and that the accused himself was in danger of being attacked. The evidence is that the police had to control the crowds and when the accused was ultimately placed in police custody they had to ensure his safe passage to the police vehicle.

[67] It was reiterated that the accused maintains his innocence. It was submitted that the court is to have regard to the fact that the police did not sustain any injuries and that the accused at the time did not pose a danger to the public. It was submitted that the circumstances of this case ought to be viewed on the lesser scale. Moreover, it was submitted that the resisting arrest charge flows from the incidents of assault and murder and that the court should consider imposing concurrent sentences, having regard to the cumulative effect of the sentence and prevent possible duplication.

Interest of society

[68] Society demands that people who commit heinous crimes must be punished.¹⁴ The court must consider the public's interest in seeing that convicted criminals are adequately punished, and seen to adequately punished, for their crimes.¹⁵

[69] Society is looking at the courts for their protection against people who commit crimes like the accused. If the courts fail to deal appropriately with criminals, society will lose confidence in the courts and this will prompt society to take the law into their own hands. *In casu* the community wanted revenge. The accused was essentially protected from them taking the law into their own hands.

[70] It is the duty of this court to restore the confidence of the community to the courts.

[71] It is so that violent crimes such as murder and robbery involving the use of dangerous weapons such as knives have now become dangerously prevalent and can be termed a pandemic. There is no doubt, that this has become a great concern

¹⁴ See *R v Swanepoel* 1945 AD 444 at p455.

¹⁵ *S v X* 1996 (2) SACR 288 (W) at 289 C-D.

to our citizenry and rightly so. It is therefore in the public interest that such crimes be punished adequately and should serve as a deterrent to others who are like minded.

[72] Mr Pietersen testified that the manner in which the children were killed, fills society with outrage as the murders were particularly brutal. Mr Pietersen opined that the accused should be removed from society. Mr Pietersen testified that he lives close to where the incident occurred and stated that there is still a buzz in the community. People are angry and they want justice. There are still people who allegedly threaten the sister of the accused because the accused's sister agreed to have the accused live with her after his release from prison.

[73] According to Mr Pietersen, the community holds a grudge against the accused's family and it is very likely that if he were to be released from prison, harm will be done to him.

Minimum Sentences with reference to substantial and compelling circumstances

[74] Prior to the enactment of the prescribed minimum sentences, sentencing primarily and exclusively fell within the discretion of the Courts. The courts had due regard to the triad, the crime, the interests of society and the circumstances of the accused, were free, to impose whatever sentences, they deemed just and fair as per the common law. This position has however changed, to the extent, that whenever an accused, is charged with one of the listed offences in the Schedules, the starting point now is Section 51 of the Criminal Law Amendment Act 105 of 1997.

[75] It is trite that in considering whether there are substantial and compelling circumstances, the court should consider all the aggravating and mitigating circumstances collectively. As to the approach to be followed, this court is bound to follow the guidelines laid down in **S v Malgas**¹⁶. This case sets out how the minimum sentencing regime should be approached and in particular how the enquiry into substantial and compelling circumstances is to be conducted by a court. The court stated as follows:

¹⁶ 2001 (1) SACR 469 (SCA).

*'What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the legislature's view that the prescribed period of imprisonment are to be ordinarily appropriate when crimes of a specified kind are committed.'*¹⁷

[76] **Malgas**, according to Navsa JA, in **DPP KZN v Ngcobo**¹⁸ states it is 'not only a good starting point but the principles stated therein are enduring and uncomplicated'. **Malgas**, which has since been followed in a long line of cases, sets out how the minimum sentencing regime should be approached and in particular how the enquiry into substantial and compelling circumstances is to be conducted by a court. I paraphrase from **Malgas**, '[t]he fact that Parliament had enacted the minimum sentencing legislation was an indication that it was no longer business as usual'.¹⁹

[77] 'A court no longer had a clean slate to inscribe whatever sentence it thought fit for the specified crimes. It had to approach the question of sentencing conscious of the fact that a minimum sentence of 15 years imprisonment had been ordained as the sentence which ordinarily should be imposed unless substantial and compelling circumstances were found to be present...That 'determinative test' for when the prescribed sentence may be departed from was expressed as follows in **Malgas** *supra* and it deserves to be emphasised, '[i]f the sentencing Court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.'

¹⁷ At para 25.

¹⁸ 2009 (2) SACR 361 (SCA) at para 12.

¹⁹ At Para 7 and 8.

[78] It was made clear in **Malgas** that the relevant provision in the Act, vests the sentencing Court with the power, indeed the obligation, to consider whether the particular circumstances of the case require a different sentence, to be imposed. And a different sentence must be imposed if the court is satisfied that substantial and compelling circumstances exist which "*justify*" the imposition such a sentence.²⁰

[79] Apart from the obvious question as to what sentences are appropriate, so too is the question whether or not substantial and compelling circumstances are present, justifying a departure from the prescribed minimum sentences. The age of the offender, the criminal record of an accused has all been held to be factors that need consideration, when the appropriateness of a sentence is to be considered.

[80] The Supreme Court of Appeal expressed the view that once a court finds substantial and compelling circumstances to be present it may impose any sentence which it regards to be appropriate. See also **S v Hildebrand**²¹.

[81] As rightfully pointed out by the defence, Section 51(3) of the Act, confers a limited discretion upon the courts to depart from the prescribed minimum sentences, as it creates two preconditions namely:

- (a) It must determine, if substantial and compelling circumstances are present, that justifies a departure, from the prescribed sentence.
- (b) The substantial and compelling circumstance(s) is to be placed on record.

[82] In the absence of these two preconditions, courts are obliged, to impose the prescribed minimum sentences, and may nevertheless, despite such circumstances, still impose the prescribed sentence.²² When imposing the prescribed sentences, courts are bound, to focus more on the retributive and deterrent purposes of sentence, than the rehabilitation and reformation of the offender.²³ The result may

²⁰ See also *S v Dodo* 2001 SACR 594 (CC) at 615f-h.

²¹ (00424/2015) [2015] ZASCA 174 (26 November 2015) at para 8-10.

²² *S v Mthembu* 2012 (1) SACR 517 (SCA) at para 11.

²³ See *S v Swart* 2004 (2) SACR 370 (SCA) at para 12 and 14, and *DPP-KZN v Ngcobo and Others* 2009 (2) SACR 361 (SCA) at para 22.

be, that despite the favourable circumstances of the accused, a court may, after having regard to the interests of society, and the nature of the offence, still decide, to impose a heavier sentence than the prescribed one.

[83] It is trite that when the court decides to impose the prescribed sentences, courts are bound, to focus more on the retributive and deterrent purposes of sentence, than the rehabilitation and reformation of the offender. Boshielo JA in held in **S v PB**²⁴ that *'Minimum sentences to be imposed are ordained by the Act, They cannot be departed from lightly or for flimsy reasons.'* The learned Judge of Appeal held further that the term substantial and compelling circumstances was elastic enough to include even ordinary mitigating circumstances and that it involves a value judgment on the part of the sentencing court.

Submissions pertaining to substantial and compelling circumstances.

[84] The defence submitted that substantial and compelling reasons exist that justify the court to consider imposing a lesser sentence. In this regard, the court is enjoined to approach sentencing the accused on his unique circumstances in a manner that promotes the spirit, purport and objects of the Bill of Rights.

[85] It was submitted that the court is to have regard to the accused personal circumstance, taking into account that the accused is not young, being in his mid-50's and that he grew up in poverty as well as his level of education, having failed grade 8 three times. It is round about this time, that the accused's father passed away. He has one surviving estranged daughter whom he did not want to burden with his unstable and traumatising life. He admitted to being a member of the 28 gang only while incarcerated. In this regard it was argued that gang membership is part of prison culture and necessary to remain protected from violence and death in prison. Before his incarceration and after his release for his prior convictions, he was not involved in any gang activity despite growing up and living in a community riddled with drugs, poverty and gangsterism.

²⁴ 2013 (2) SACR 533 (SCA) at 539 para 20.

[86] It was submitted that the court is to take cognisance of the fact that the accused, when he was sentenced at the age of 16 years was exposed to corporal punishment. This, it was argued, conveyed an incorrect message to the accused that violence was an acceptable means of meting out punishment. It was emphasised that the accused did not obtain the proper assistance and counselling through government programmes. It was highlighted that Mr Pietersen made the concession that there is a general decline in criminality that comes with aging.

[87] It was contended that the accused was not afforded adequate legal representation which culminated in the denial of his right to the expungement for his offences older than 10 years, diversion, mediation and representation for his earlier offences and property and adequate intervention by the state.

[88] It was argued that the accused's personal circumstances are to be considered in a manner that promotes the spirit and purport and objects of the Bill of Rights in keeping with what the Constitution envisages, namely to redress injustices of the past. This argument went on further to highlight the inequalities perpetrated by apartheid; where dehumanisation deprived people of colour from their dignity and basic rights. Various other factors were illuminated to demonstrate the aftermath of apartheid on coloured communities in particular. It was argued that the historical race-based disadvantage that the accused experienced as a coloured person ought to be regarded as a mitigating factor as it negatively impacted his life and stunted his growth.

[89] Counsel on behalf of the accused contextualised the fundamental underlying reasons and circumstances which draws males in particular to gangsterism. In this regard, research shows that vulnerable males who come from dysfunctional families, with unhealthy and insecure parent relationships are targeted recruits. It was submitted that the accused's prison gang affiliation should not be held against him as an aggravating factor nor as a factor that justifies a declaration of habitual criminal.

[90] It was furthermore contended that the time already served by the accused, awaiting trial should be taken into consideration, having been arrested on 1 May

2019. It was furthermore submitted that pre-trial detention is generally regarded as being more onerous than post-sentence detention.

[91] Counsel on behalf of the state contended that the seriousness of the crimes and the interest of society outweigh the personal circumstances of the accused and called for the imposition of minimum sentence on the murder charges. It was submitted that no substantial and compelling circumstances are present to deviate from the prescribed minimum sentence.

Discussion

[92] In *Makwanyane*²⁵ the Constitutional Court held that violent acts of those who destroy life cannot be condoned and severe punishment should be meted out where deserved. The wilful taking of a human life calls for a severe penalty. Perpetrators of such crimes must be dealt with according to our system of criminal justice.

[93] This court wishes to emphasise that it is mindful of its duty to adjudicate these proceedings on the unique facts of this matter especially insofar as it relates to this accused before court. I would like to pertinently mention that I have carefully considered every detail of the accused's personal circumstance as it has been thoroughly and meticulously placed before me and have taken serious regard thereto.

[94] This court is also fully aware that a Probation Officer's report is there to assist the court and a recommendation made by a Probation Officer in no way usurps the court's judicial function to decide on an appropriate sentence. Concessions by the Probation Officer and omissions by the Probation Officer as illuminated by the defence are important considerations for this court to contemplate when coming to an ultimate decision on sentencing.

Declaration as a habitual criminal

²⁵ 1995 (1) SA 391 (CC).

[95] Whilst the invocation of Section 286 of the Criminal Procedure Act was suggested by the Probation Officer, the court does not deem it appropriate despite the fact that the accused has been warned and view of the sentence that this court envisages to impose.

[96] The court is astute not simply rubber stamping a recommendation from a Probation Officer and will consider the matter in light of the unique circumstances of this case and apply the appropriate sanction as I deem mete.

Conclusion

[97] This court has carefully listened to the submissions by the defence as to the accused's difficulties and struggles after losing his father. The court acknowledges that the accused may have been failed by various key role-players over time and it may be that if he was afforded the necessary appropriate support and tools, his life and life choices may have followed a different trajectory and may have had different outcomes for him.

[98] Whilst this court has a measure of understanding to the plight of the accused, he cannot hide behind these failures to justify why his life has turned out the way that it did; I say this because no matter who you are in life and where you come from, as an adult you should be able to know the difference between right and wrong. Every person has a moral compass. In the accused's instance, it is apparent that he came from a good home; his parents being referred to as god-fearing must have raised him up on Christian values with proper grounding. This in and of itself supports this court's contention that the accused should have an inherent sense of what is right and wrong.

[99] There is no doubt that there is no place in society for people such as the accused. In considering an appropriate sentence the court must endeavour to restore the trust of society in the criminal justice system. The court has due regard for the bench marks set by the legislature and it is through the minimum sentence legislation that life imprisonment has been ordained.

[100] Society needs to be protected from the accused who callously, brutally, viciously and cowardously took out his frustrations, on two innocent, defenceless children. These are the children he professed to care for as a so-called loving father. The severity of the impact of the murders on the mother of F[...] and C[...]; the grandparents, their sibling the community and the accused's own family. The family and community will mourn the untimely loss of the lives of F[...] and C[...] forever; having to live with the traumatic consequences and wonder what could have driven someone to murder two innocent children in such an inhumane manner.

[101] I have already indicated that despite the contention, a Section 286 declaration is not deemed suitable. It is noteworthy that the accused began displaying uncontrollable behaviour since his early teens, which behaviour was described by Mr Pietersen to include aggression, disobeying his parents and being in trouble with his teachers. It is evident that previous interventions have had no effect on the accused as he was afforded numerous exposures to social workers' interventions and programmes which has evidently not borne any fruit in shaping the accused's attitude towards crime and criminality.

[102] The accused's resistance of arrest also speaks volumes about the accused's attitude towards authority and is demonstrative of the fact that the accused has no respect for the law, let alone others. He is a self-confessed member of the 28's prison gang. I will accept in the accused's favour that he has no affiliation with any gang outside of prison. I have taken cognisance of the history and origin of the prison gang culture and ultimate reasons that inform the general prison population to align with a gang inside prison; however, again it comes down to choices that the accused makes.

[103] As previously stated, the accused was raised by God-fearing parents who strove to instil in him a strong sense of responsibility and decency. He was raised with good morals and upon enquiry by the social worker, the behaviour of the accused contrasts with the attestations of his sister Maria Fienis who described him as a good man. Yet, the accused callously maintained a relationship with the family of the victims; reaching out to the mother of Ms A[...] by way of a letter. He has been said to taunt his victims, which actions he displayed in this matter as well. He was a

close friend of the father of Ms A[...]. He is much older than her and should have been there as her protector. The attack on Ms A[...] and gruesome killing of the children, is a betrayal of his friendship with Ms A[...]’ parents who trusted him with their daughter and grandchildren. This trust was indeed brutally violated through his unexpected and unnecessary cruelty perpetrated against two innocent children. The extent of the injuries on those two little bodies is unfathomable, F[...] having sustained 19 stab wounds and C[...] having sustained 14 stab wounds with a fatal head injury is nothing short of barbaric.

[104] This court is further mindful that Ms A[...] sustained no injuries. This is not because the accused did not want to hurt her, but because he was stopped before he could actually hurt her; having made his intentions plain whilst wielding an iron object. Ms A[...] was essentially rescued before the accused could complete his intention at that time the accused held her by the collar. Seen within the context of the scene is indicative that the accused had intentions to execute his threat. The facts of this matter must be considered in its totality in order to appreciate how, why and where the course of events started and how it all ultimately ended.

[105] The Constitution of the Republic of South Africa provides that all persons have the right to life and to be free from all forms of violence. This court is aware that any punishment will not bring little F[...] and C[...] back, but perhaps it will hopefully assist the family and community to find some closure and commence the journey towards healing. Counsel for the state likened what F[...] is experiencing to her still being stuck in that Wardrobe because it is in that wardrobe that things changed drastically. When she came out of the wardrobe she walked into nightmare and she is still caught up in that nightmare, as she hears the cries of F[...] and C[...], hoping to wake up and be told that it was all a dream.

[106] The accused has inflicted the deepest hurt possible to Ms A[...] then anyone then in the letter “Exhibit C”, comforts that her with Psalm 50 verse 15.

[107] The accused’s violent, repugnant and heinous behaviour is demonstrative of someone who is highly dangerous; more especially because he has not displayed any guilt or remorse. I am not persuaded that the accused can be rehabilitated, given

the opportunities he had in the past and more especially the seemingly flimsy reason that triggered Mr Kalmeyer's rage. The question to be that arises is what event will next trigger such rage. Society needs to be protected. Human life must be viewed as sacrosanct. The egregiousness and brutality of these offences are so heinous that there is no other sanction, but for the accused to be removed permanently from society because of his egregious behaviour. This court is intent on sending a very clear and strong message to the accused and all would be offenders that heinous, senseless and brutal murders on our most vulnerable citizens of South Africa, our children, will not be tolerated and will be meted with the full might of the law.

[108] After carefully considering the submissions made by Counsel for the accused, this court cannot find any substantial and compelling circumstances, individually or cumulatively to enable it to depart from the prescribed minimum sentence ordained by the legislature and is mindful that it cannot do so for flimsy reasons; which principle has been repeatedly endorsed by a plethora of cases dealing with minimum sentences.

Sentence:

[109] As a result, of the aforementioned reasons, I consider the following sentence to be fair, just and proportionate, taking all factors into account in these circumstances as per **Annexure "A"**:

- (a) **Count 1** – Assault with intent to do grievous bodily harm - 5 years' imprisonment.
- (b) **Count 3** – Murder read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 - Imprisonment for Life.
- (c) **Count 4** – Murder read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 - Imprisonment for Life.
- (d) **Count 5** – Resisting Arrest - 2 years' imprisonment.

By operation of law, all these sentences on counts 1 and 5 automatically run concurrently with the sentences of life imprisonment, in terms of Section 39(2) of the Correctional Services Act 111 of 1988.

Ancillary Orders:

1. In terms of **Section 103 (1) of the Firearms Control Act 60, (Act 60 of 2000)**, the court makes no order. The accused is hereby deemed unfit to possess a firearm.
2. In terms of **Section 103(4) of Act 60 of 2000**, the court issues a search and seizure order for competency certificates, licences, authorisations and permits; firearms and ammunition.
3. The Chief Registrar is ordered to inform the Registrar: Central Firearms Control Register in writing of this order.
4. In terms of the provisions of **Section 299A of the Criminal Procedure Act 51 of 1977**, as per **Annexure “B”**, the family of the deceased's are to be notified or if present in court are informed that they have the right to be present should the accused be considered for parole that they can make representations at such parole meetings. The Registrar is directed to complete the relevant forms to hand to the complainant.

P ANDREWS, AJ

Acting Judge of the High Court



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Annexure: A

Case Number: CC44/2020

In the matter between:

THE STATE

and

DERICK KALMEYER

SENTENCE ORDER

As a result, the following sentence is imposed on the accused:

(a) Count 1 – Assault with intent to do grievous bodily harm - 5 years' imprisonment.

(b) Count 3 – Murder read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 - Imprisonment for Life.

(c) Count 4 – Murder read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 - Imprisonment for Life.

(d) Count 5 – Resisting Arrest - 2 years' imprisonment.

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P ANDREWS, AJ
Acting Judge of the High Court



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Annexure B

Case Number: CC44/2020

In the matter between:

THE STATE

and

DERICK KALMEYER

**NOTICE IN TERMS OF SECTION 299A
RIGHT OF COMPLAINANT TO MAKE REPRESENTATIONS WITH REGARD TO
PLACEMENT ON PAROLE OR CORRECTIONAL SUPERVISION OF OFFENDER**

1. The complainant/immediate relative of deceased victim is informed that as the accused has been convicted and sentenced to imprisonment for murder or any other offence which involves the intentional killing of a person; he/she has the right to make representation to the Parole Board of Correctional Services when placement of the prisoner on parole or under Correctional Supervision is considered.

2. If the complainant or a relative intends to exercise the right by making representations to or attending a meeting of the parole board, he or she has a duty—

- (i) to inform the Commissioner of Correctional Services thereof in writing;
 - (ii) to provide the said Commissioner with his or her postal and physical address in writing; and
 - (iii) to inform the said Commissioner in writing of any change of address.
3. In terms of Government Notice R248 of 7/4/06 (The Directives), the complainant or a relative is requested to complete the attached form and hand it to the clerk or assistant registrar of the court before the end of the court day. Copy handed to complainant/family member.

P ANDREWS, AJ

Acting Judge of the High Court