



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

Appeal case number: A104/2020

Regional Court case number: MSH 174/16

In the matter between:

SITHEMBILE GIDI

Appellant

and

THE STATE

Respondent

JUDGMENT DELIVERED ON 29 MAY 2025

VAN ZYL AJ:

Introduction

1. This is an appeal against the appellant's conviction and sentence on two counts, arising from a decision of the Mossel Bay Regional Court, held at George. The appellant was one of two accused before the regional court.
2. The appellant was arraigned on the following charges:

- 2.1. one count of robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977 (“the CPA”), read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997 (“the CLAA”), in that he had unlawfully and intentionally robbed the complainants¹ whilst threatening them with a firearm; and
 - 2.2. one count of the contravention of section 3 of the Firearms Control Act 60 of 2000 (“the FCA”), namely the unlawful possession of a firearm (namely a 7.65 caliber CZ model 27 a semi-automatic pistol) without being the holder of a licence, permit, or authorisation issued in terms of the FCA.
3. Prior to the leading of evidence and at the outset of the hearing the appellant was warned that the provisions of section 51(2) read with Schedule 2 Part 2 of the CLAA would apply should he be found guilty on either of the charges.
4. The appellant was legally represented throughout the trial, and pleaded not guilty to both counts. On 13 December 2017, he was convicted on both counts, and sentenced to 15 years’ imprisonment in respect of each count. It was ordered that the sentences were to run concurrently.
5. On 16 January 2018, the appellant and his co-accused successfully applied for leave to appeal against their convictions and sentences. There was a substantial delay in obtaining the record in the regional court so as to prepare the record on appeal. It seems that there were problems with the regional court’s main server, which complicated the transcript of the recorded evidence. The appeal of the appellant’s co-accused was finalized in 2020, but the appellant’s appeal was delayed because of an incomplete record. The situation was eventually remedied in 2024 – it is unfortunate indeed that the appellant has had to wait seven years before the hearing of his appeal.

¹ Only one of the complainants, Mr Kawanula, gave evidence at the trial. The other complainant could not be located.

6. It appears from the record that the appellant has been, and remains, in custody.

The grounds of appeal

7. The appellant's defence at the trial was effectively a bare denial – he testified that he was not near the scene of the crime at the material time, and that he had no knowledge of the presence of the firearm and stolen goods found in the house where the police had tracked him to. The appellant's grounds of appeal are equally generic:
 - 7.1. that the State failed to prove its case beyond a reasonable doubt;
 - 7.2. that the regional court failed correctly to evaluate the evidence presented by the State, considering contradictions presented in the State's case;
 - 7.3. that the regional court did not assess the complainant's (Mr Kawanula's) evidence with the necessary degree of caution, in that such evidence was considered sufficient to prove the appellant's guilt beyond reasonable doubt in respect of the charge of robbery with aggravating circumstances charge;
 - 7.4. that the regional court was wrong in finding that the appellant had knowledge of the firearm, that he was in possession of the firearm, and had the intention to possess the firearm, and in finding that the evidence of the eyewitnesses was sufficient to prove such knowledge and possession of the firearm; and
 - 7.5. that the regional court erred by rejecting the appellant's version, and in concluding that his version was not reasonably possibly true.
8. Is there merit in these contentions? I turn to a discussion of the facts in the context of the relevant principles.

The convictions

9. It is trite that a court of appeal's powers to interfere with the findings of a trial court are limited to cases where there was a material misdirection from the trial court on findings of fact, and that the recorded evidence shows such findings to be clearly wrong. The reason for this is obvious: the trial court has the advantage of seeing, hearing, and appraising witnesses. A court of appeal would therefore only interfere with the trial court's evaluation of oral evidence in exceptional circumstances.²
10. The State called six witnesses in support of their case against the appellant. I refer briefly to their evidence.
11. Mr Kawanula, one of the complainants, worked at the Jabulani shop in Mossel Bay with Mr Archiso, the other complainant. He knew the appellant and his co-accused: he knew the co-accused's name and where he resided, but only knew the appellant by face. On the day of the incident, four men came into the shop, including the appellant and his co-accused. When the co-accused went outside again, the appellant took out a firearm and pointed it at Mr Kawanula and Mr Archiso, demanding money. They knelt down. The appellant took various items, which he placed in a black backpack. The appellant had nothing covering his head, and there was enough time for Mr Kawanula to recognize him. The police were contacted and, after having arrested them, brought Mr Kawanula to the appellant and his co-accused for identification.
12. Constable Shawn Kiewet was on duty on the day in question. It was evening when he received a complaint of a business robbery. He was the first to arrive on the scene. He went to the co-accused's residence and arrested him, and then proceeded to the address of a shack, provided by the co-accused, to look for the appellant. There he arrested the appellant and a woman. A firearm was found under the bed in the shack, as well as a backpack containing some

² *S v Monyane and others* 2008 (1) SACR 543 (SCA) para 15.

of the stolen items, including airtime vouchers and cigarettes.

13. Constable Joseph Oosthuizen responded to the report of the robbery and went first to the co-accused house, because he knew the co-accused. He and his colleagues then went to the shack where they found a male and female seated on the bed. When they searched the premises, they found a firearm. The appellant denied any knowledge thereof.
14. Sergeant Donovan Geswindt, knew both the appellant and the co-accused. He was not involved in their arrest, but he took the warning statements. He informed the appellant of the co-accused's version, whereupon the appellant replied that he knew nothing of a firearm as he had come out of prison the previous day.
15. Ms Juliana Stuurman knew the co-accused and appellant; the latter was her ex-boyfriend. She was at her friend's place when the appellant came by. He was intoxicated and had a firearm in his possession. She left with him and he bought drugs on the way. This was after nine in the evening. The appellant had a black and orange Karrimor backpack with him, with several packets of cigarettes. While walking, the appellant spotted the police and told her to run. When they reached the shack, the appellant tossed the gun under the bed, and the bag on top of the bed. The bed did not have a mattress.
16. Ms Neliswa Daweti was the co-accused's girlfriend. She knew the appellant, who had just been released from prison. On the evening before the incident the appellant came to the co-accused's house and said he had a firearm that he would like to sell. The co-accused had a buyer. They left to fetch the firearm where the appellant had previously resided. Upon their return, the appellant had the firearm, and they planned to sell it the next day. The appellant returned the next day, and he and the co-accused left around 17:00 with the firearm. At 19:00, the appellant returned with Ms Stuurman. He had a karrimor bag, from which he took the firearm. There was an argument between him and his co-accused.

17. The appellant testified in his own defence, and did not call any witnesses. He denied all the allegations against him, explaining that he was merely sleeping at his co-accused's shack. He therefore did not know about the firearm and the backpack, or that those items were inside the shack.
18. The co-accused did not give evidence. At the onset of the case the State submitted various exhibits to the court on an undisputed basis. These included a photo identity parade, where both the appellant and his co-accused were identified by the complainants, and a ballistics report in respect of the unlawful firearm.
19. As regards proof beyond reasonable doubt, in *S v Chabalala*³ the Supreme Court of Appeal ("SCA") formulated the principles for evaluating the evidence of the State and the accused in criminal trials as follows:

"The trial court's approach to the case was, however, holistic and in this it was undoubtedly right: S v Van Aswegen 2001 (2) SACR 97 (SCA). The correct approach is to weigh up all the elements which points towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of the inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt."

20. In *S v Van der Meyden*⁴ the Court held:

"A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence The proper test is that the accused is bound to be convicted if the evidence established his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the

³ 2003 (1) SACR 134 (SCA) para 15. Emphasis supplied.

⁴ 1999 (1) SACR 447 (W) at 449I-450B. Emphasis supplied.

evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found unreliable; some of it might be found to be possibly false or unreliable; but none may simply be ignored.”

21. Proof beyond reasonable doubt must thus be determined by assessing all probabilities and improbabilities, not only in the evidence of the state, but also in the evidence of the accused:⁵

“But whilst it is entirely permissible for a court to test an accused's evidence against the probabilities, it is improper to determine his or her guilt on a balance of probabilities. The standard of proof remains proof beyond reasonable doubt, i.e. evidence with such a high degree of probability that the ordinary reasonable man, after mature consideration comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. An accused's evidence therefore can be rejected on the basis of probabilities only if found to be so improbable that it cannot be reasonably possibly true ...”

22. There is no obligation on the State to close every avenue of escape for the accused. The State's evidence must, however, be of such a degree that upon mature consideration a reasonable person would have no doubt that the accused committed the offence. In evaluating the evidence, a court must adopt a holistic approach and consider and evaluate all the evidence as presented.⁶ The accused does not bear any onus.⁷
23. In the present matter, the regional court carefully weighed and considered the evidence at its disposal, including the contradictions upon which the appellant relies. When considering contradictory versions or contradictory parts of the oral evidence of witnesses, a holistic evaluation is required. This is what the

⁵ *Monageng v S* [2009] 1 All SA 237 (SCA) paras 13-14. Emphasis supplied.

⁶ *R v Mlambo* [1957] 4 All SA 326 (A) at 337.

⁷ See *S v V* 2001 (1) SACR 453 (SCA) para 3.

regional court did. It recognized that *"..... not every error made by the witness affects his credibility; in each case the trier of facts has to make an evaluation; taking into account such matters as the nature of the contradictions, their number and importance and their bearing on the other parts of the witness's evidence"*⁸

24. *S v Mafaladiso en andere*⁹ is also instructive in this respect. The relevant extract, translated from the original Afrikaans, reads as follows:

"The judicial approach to contradictions between two witnesses and contradictions between the versions of the same witness (such inter alia, between her or his viva voce evidence and previous statement) is in principle (even if not in degree), identical. Indeed in neither case is the aim to prove which of the versions is correct, but to satisfy oneself that the witness could err, either because of defective recollection or by dishonesty. ...

The mere fact that there are self-contradictions must be approach with caution by the court. Firstly, it must be carefully determined whether there is an actual contradiction and what the precise nature thereof is. ... Secondly , it must be kept in mind that not every error by a witness and not every contradiction or deviation affects the credibility of a witness. Non-material deviations are not necessarily relevant.... Thirdly, the contradictory versions must be considered on a holistic basis. The circumstances under which the versions were made, the proven reasons for the contradictions, the actual effect of the contradictions with regard to the reliability and credibility of the witness, the question whether the witness was given sufficient opportunity to explain contradictions - and the quality of the explanations - and the connection between the contradictions and the rest of the witness' evidence, amongst other factors, to be taken into consideration and weighed up.... Lastly, there is the final task of the trial Judge, namely to weigh up the previous statement against the viva voce evidence, to consider all the evidence and to decide

⁸ *S v Oosthuizen* 1982 (3) SA 571 (T) at 576G-H. See also *S v Bruiners en 'n ander* 1998 (2) SACR 432 (SE) at 439E-F: "Ondervinding het geleer dat daar byna nooit twee of drie getuies sal wees wat presies dieselfde getuienis sal aflê met betrekking tot dieselfde voorval of gebeurde nie." [My loose translation: "Experience has taught that there would almost never be two or three witnesses who would give exactly the same evidence in relation to the same incident or events".]

⁹ 2003 (1) SACR 583 (SCA) at 593F-594G. Emphasis supplied.

whether it is reliable or not and to decide whether the truth have been told, despite any shortcomings."

25. The appellant places heavy reliance on the following contradictions in the evidence, and criticizes the regional court for nevertheless convicting the appellant:
 - 25.1. Mr Kawanula was adamant that he had seen the appellant a few days before the incident despite it being disputed that this was impossible because the appellant was in custody. Also, in his statements Mr Kawanula only mentioned that he knew one of the four men who had entered the shop, which would be the co-accused. In court he testified that he knew the appellant.
 - 25.2. The police officers testified that the appellant and Ms Stuurman were sleeping on the bed in the shack. However, Ms Stuurman indicated that the bed had no mattress. Ms Stuurman further testified that the karrimor bag was on the bed, but the police officers indicated it was on the floor.
 - 25.3. In examination-in-chief Ms Stuurman never mentioned the person known as Pikes. It was only during cross-examination that she testified that Pikes was with the appellant when the later fetched her at her friend's house.
 - 25.4. Ms Stuurman disputed going to the co-accused's residence despite Ms Daweti testifying that Ms Stuurman was there with the appellant.
 - 25.5. Ms Stuurman testified that she was afraid of the appellant, yet she went with him and even ran with him when he saw the police. She testified that she threw the drugs they had bought away, which is unlikely: if she was afraid of the appellant she could have informed the police about the drugs.

26. I do not agree with the appellant that these contradictions are material to the extent that they would affect the credibility of the relevant witness, or taint the reliability of the evidence against the appellant, viewed holistically.
27. Where contradictions exist between Mr Kawanula's evidence and his statement previously made to the police, these contradictions are immaterial, and sufficient explanation thereof was provided by Mr Kawanula under cross-examination. It is clear from the transcript of the proceedings that there were difficulties with the interpretation of his evidence. This was probably the case, too, at the time when he gave his statement to the police. This did not, however, affect the inherent quality of his evidence. He remained consistent.
28. In my view, the regional court gave due regard to the fallibility of identification, and sufficiently addressed the manner in which the appellant was identified. The facts indicate that Mr Kawanula was familiar with both accused. He had encountered them previously, prior to the day of the incident, and recognized them. He was adamant in cross-examination that he had not only known the appellant from the day of the incident, but had seen him previously. Mr Kawanula was certain about the identification of the appellant when he pointed him out to the police. There was no hesitation on his part. He remained clear and consistent in this respect even under cross-examination.
29. In *Abdullah v S*,¹⁰ the SCA stated that "when seeing a person who is known to you, it is not a process of observation that takes place but rather one of recognition. This is a different cognitive process which plays a vital role in our everyday social interaction. The time necessary to recognize a known face as opposed to identifying a person for the first time, is very different. It has been recognized by our courts that where a witness knows the person sought to be identified, or has seen him frequently, the identification is likely to be accurate."
31. Thus, where a witness knows a person, questions of identification, of facial

¹⁰ [2022] ZASCA 33 (31 March 2022) para 13. Emphasis supplied.

characteristics, and of clothing are of much less importance than in cases where there is no previous acquaintance with the person sought to be identified. What must be tested is the degree of previous knowledge and the opportunity for a correct identification, having regard to the circumstances in which the identification was made.¹¹ The way in which Mr Kawanula described his encounter with the appellant in the shop during the incident leaves little room for doubt, let alone reasonable doubt. The appellant was correctly convicted on the charge of robbery with aggravating circumstances.

30. Mr Kawanula was a single witness in respect of the identification of the appellant at the scene of the crime. His evidence is, however, corroborated by the other facts placed before the regional court. In *S v Sauls and others*¹² it was held that:

“There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so, will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told ... It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense.”

31. On the evidence as a whole Mr Kawanula’s identification of the appellant as one of the perpetrators cannot be faulted.
32. In determining whether the appellant possessed the firearm for the purposes of the second charge, the regional court again considered all of the available evidence holistically.
33. The witnesses Ms Stuurman and Ms Daweti both knew the appellant. They testified, independently, that immediately prior to and on the day of the robbery, the appellant was in possession of the firearm. Ms Stuurman

¹¹ *R v Dladla* 1962 (1) SA 307 (A) at 310C-E.
¹² 1981 (3) SA 172 (A) at 180F-H.

confirms that on the day when the appellant was arrested, the firearm was found under the bed in the shack where she and the appellant had been traced to by the police. She had earlier observed the appellant flinging the firearm under the bed, just prior to the police entering the shack. She further insists she had seen the appellant carrying the firearm in the front of his pants earlier the day. It was upon arrival of the police at the shack that he took the firearm from his waist and tossed it under the bed. She had also, prior to that day, seen the firearm in the appellant's possession, at the time when they were living as partners.

34. Constable Ooshuizen, with his colleagues Constable Kiewiet and Sergeant Geswindt, confirms that the firearm was found in the shack where Ms Stuurman and the appellant were present. Constable Oosthuizen was the one who had found the firearm under the bed.
35. Ms Daweti, who was the girlfriend of the appellant's co-accused, testified that she had heard a discussion between the appellant and his co-accused about the sale of the firearm to a potential buyer. That same night she saw the appellant produce the firearm that was to be sold to a potential buyer from a plastic sling bag. She further testified that on the next day she observed the firearm in a black Karrimor bag in the appellant's possession.
36. All of this evidence cannot be skirted over merely because of the presence of immaterial contradictions. The ballistics report that was handed in confirmed that the firearm found in the appellant's possession was a 7.65 caliber CZ model 27 a semi-automatic pistol.
37. The regional court, taking into account the facts before it, correctly concluded that the appellant at all relevant times had knowledge of the firearm, was in possession of the firearm, and had the intention to possess the firearm. The appellant was thus correctly convicted on the charge of contravening section 3 the FCA.

Should the sentences be reduced on appeal?

38. The test on appeal in relation to sentence is “*whether the court a quo misdirected itself by the sentence imposed or if there is a disparity between the sentence of the trial court and the sentence which the Appellate Court would have imposed had it been the trial court that it so marked that it can properly be described as shockingly, startling or disturbingly inappropriate*”.¹³
39. Sentencing is about achieving the right balance between the crime, the offender, and the interests of the community.¹⁴ A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others.¹⁵
40. The question is essentially whether, on a consideration of the particular facts of the case, the sentence imposed is proportionate to the offence, with reference to the nature of the offence, the interests of society, and the circumstances of the offender.
41. In *S v Pillay*¹⁶ the appellate division (as it then was) held that the word “misdirection” simply means an error committed by the court in determining or applying the facts for assessing the appropriate sentence. As the essential enquiry on appeal against sentence is not whether the sentence was right or wrong, but whether the court that imposed it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the appeal court to interfere with the sentence. The misdirection must be of such a nature, degree or seriousness that it shows, directly or inferentially, that the court did not exercise its discretion at all or exercised it improperly or unreasonably. Such a misdirection is usually and conveniently termed one that vitiates the court’s discretion on sentence.

¹³ *S v Van de Venter* 2011 (1) SACR 238 (SCA) para 14. See also *S v Grobler* 2015 (2) SACR 210 (SCA) para 5.

¹⁴ *S v Zinn* 1969 (2) SA 537 (A) at 540G-H.

¹⁵ *S v Banda* 1991 (2) SA 352 (BG) at 355A.

¹⁶ 1977 (4) SA 531 (A) at 535E-F.

42. In the present matter the prescribed minimum sentence in respect of each of the charges against the appellant was 15 years in respect of a first offender.¹⁷ The appellant contends that the following circumstances, viewed as a whole, should have been regarded as substantial and compelling:
- 42.1. The appellant was 32 years old at date of the commission of the offence and 34 years old at the time of sentencing.
 - 42.2. He was in a relationship, and have a minor son.
 - 42.3. He achieved grade 11 at school.
 - 42.4. The appellant was previously employed on a casual basis earning about R80-R100 day, and worked two to three days per week.
 - 42.5. The appellant was in custody for more than a year.
 - 42.6. He was a first offender in relation to the offences of which he had been convicted.
 - 42.7. No violence was used in the commission of the offences, and the complainants were not injured.
 - 42.8. The firearm was defective.
 - 42.9. Some of the stolen terns were recovered.
43. The appellant's counsel sensibly did not press these circumstances in argument. She nevertheless urged this Court to show mercy to the appellant in reconsidering the sentences.
44. It seems to me that mercy – however wide and undefined its ambit may be in

¹⁷ See section 51(2)(a)(i) of the CLAA, read with Schedule 2 Part 2 to the CLAA.

the circumstances – is by itself not a sufficient ground upon which to deviate from the prescribed sentences. Courts may not lightly depart from the prescribed minimum sentences:¹⁸

"... courts have a duty, despite any personal doubts about efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and, like other arms of State, owe their fealty to it. Our Constitutional order can hardly survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domains of the power of the other arms of the State. Here Parliament has spoken. It has ordained minimum sentences for specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as 'relative youthfulness' or other equally vague and ill-founded hypotheses that appear fit the particular sentencing officer personal notions of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, is foundational to the rule of law, which lies at the heart of our constitutional order."

45. In *S v Malgas*¹⁹ the Supreme Court of Appeal provided guidelines to be followed in determining whether substantial and compelling circumstances exist to justify the departure from the prescribed sentence. The Court stated, *inter alia*, that:

45.1. Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment as the sentence that should ordinarily and in the absence of weighty justification be imposed for certain crimes.

45.2. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit

¹⁸ See *S v Matyityi* 2011 (1) SACR 40 (SCA) para 23. Emphasis supplied.
¹⁹ 2001 (1) SACR 469 (SCA).

a severe, standardised, and consistent response from the courts.

- 45.3. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.
- 45.4. All factors traditionally taken into account in sentencing continue to play a role. None is excluded at the outset from consideration in the sentencing process.
- 45.5. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick (“substantial and compelling”) and must be such as would cumulatively justify a departure from the standardised response that the legislature has ordained.
46. Substantial and compelling circumstances need not be exceptional in the sense that they are rare or seldom encountered, nor are they limited to factors which diminish the moral guilt of the accused. As discussed in *S v Malgas*, the essential issue is whether the sentence imposed is proportional having regard the triad in *S v Zinn*.
47. The appellant does not indicate what he regards as an appropriate sentence in the circumstances. Be that as it may, I do not agree that the regional court erred in imposing the sentences that it did. The prescribed minimum sentences themselves already took into account that the appellant was a first offender in relation to the types of offences involved.²⁰ These types of offences are prevalent in the community, who requires justice to be done.

²⁰ Section 51(2)(i) of the CLAA: “... a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in- (a) Part II of Schedule 2, in the case of- (i) a first offender, to imprisonment for a period not less than 15 years; ...” (emphasis supplied).

There is nothing substantial and compelling in the appellant's personal circumstances, or in the circumstances pertaining to the offences. As far as the firearm is concerned, the regional court took into account that it might have been defective, but explained why this should not be considered a mitigating factor in his assessment of what an appropriate sentence should be.

48. The aggravating factors by far overshadow any mitigating factors in the present case. The appellant has shown no remorse, insisting to this day that he was far removed from the scene of the crime. He has attempted to put as much distance between himself and the events of that day as possible, even implicating his co-accused in respect of possession of the firearm. He committed these crimes one day after having been released from prison, and while still on parole. This bodes ill for any realistic prospect of rehabilitation.²¹
49. The appellant has, in addition, two previous convictions in respect of which violence was an element, including rape, where he was sentenced to long-term imprisonment of 10 years imposed in terms of section 51(2) of the CLAA.
50. It follows that the two 15-year sentences are not shockingly inappropriate. In fact, in ordering them to run concurrently in terms of section 280(2)²² of the CPA, the regional court showed considerable mercy. In my view, the regional court cannot be faulted on the sentences imposed.

Order

51. In the circumstances, I suggest that the appeal be dismissed.

²¹ See *S v Tsotetsi* 2019 (2) SACR 594 (W) para 29, where the court sets out the basic principles to be considered in the sentencing process, including that “*rehabilitation serves as a purpose of punishment only if there is the potential to achieve it.*”

²² Section 280(2) of the CPA: “*Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently.*”

P. S. VAN ZYL
Acting Judge of the High Court

I agree, and it is so ordered.

M. FRANCIS
Judge of the High Court

Appearances:

For the appellant:

Ms N. Abdurahman, Legal Aid South Africa

For the respondent:

Ms A. Hess, Directorate of Public
Prosecutions, Western Cape*