

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: CC5/2024

(1) Reportable: No.

(2) Of interest to other judges: No

(3) Revised.

Date 20 May 2025

Signature

In the matter between:

THE STATE

and

DOCTOR NKURUBE MARUMA

JUDGMENT ON SENTENCE

Munzhelele J

[1] The accused, Doctor Nkurube Maruma, was convicted of the following offences:

- Rape: Counts 1, 3, 6, 8, 13, 15, 19, 21, 24, 26, 27, 28, 29, 32, 34, 36, 40, 42, 44, and 46.
- Housebreaking with intent to rob and robbery with aggravating circumstances: Counts 2, 9, 12, 14, 20, 23, 25, 31, 33, 41, and 45. The aggravating circumstances involved the wielding of a knife and/or a firearm.
- Housebreaking with intent to rape and rape: Counts 4 and 7.

- Housebreaking with intent to steal and theft: Counts 38 and 43.
- Sexual assault: Count 10.
- Attempted rape: Count 22.
- Robbery with aggravating circumstances: Counts 30, 37, and 39. The aggravating circumstances involved the use of a firearm and/or a knife.
- Theft: Count 35

[2] Before passing sentence, section 274 of the Criminal Procedure Act 51 of 1977, requires the trial court to obtain sufficient information to enable it to impose an appropriate and just sentence. The purpose is to ensure that the Judge is well-informed about the relevant facts of the case, the circumstances of the accused, and any other factors that may affect sentencing. In *S v Samuels* 2011 (1) SACR 9 (SCA) at [8] Ponnar JA cited with approval the following paragraph from *S v Siebert* 1998 (1) SACR 554 (SCA) 558j–559a:

'Sentencing is a judicial function *sui generis*. It should not be governed by considerations based on notions akin to onus of proof. In this field of law, public interest requires the court to play a more active, inquisitorial role. The accused should not be sentenced unless and until all the facts and circumstances necessary for the responsible exercise of such discretion have been placed before the court.'

[3] The accused did not testify or call any witnesses, but relied on the pre-sentence report for allaying his personal circumstances. The State also did not call any witnesses but submitted that the evidence on merits will be relied on to show the impact of these offences on the victims. The court had ordered that a pre-sentence report from the probation officer should be obtained to have enough information during the sentence of the accused. It was presented to court by Mr. Mbatha and handed in as evidence and as exhibit "ZZ". The pre-sentence report recommended that the accused be sentenced to a minimum sentence in terms of section 51(1) of act 105 of 1997.

[4] The personal circumstances of the accused are as follows: He is a 35-year-old single man and the father of three children. He previously resided with the mother of two

of his children, aged five and two years, respectively. He was the primary breadwinner for his children; however, they are now dependent on child support grants for survival.

The accused has a history of abusive behavior towards his girlfriend, Ms. A[...] M[...], and continues to threaten her, including threats to have individuals harm or kill her. He attained education up to Grade 9 at Masobe High School. He has prior convictions for assault with intent to do grievous bodily harm.

Following the death of his mother, the accused has been left without familial support, as his sibling relocated to Gauteng in search of employment. The accused acknowledges that he has never been gainfully employed. Instead, he sustained himself through criminal activities, including robbery, housebreaking and selling stolen property for income.

The accused is in good physical health. He admitted to consuming alcohol, smoking cigarettes and marijuana, and later began using "kat" (khat). He has shown no remorse for his actions. He has been in custody since the time of his arrest. He attributes his behavior to alleged bewitchment.

[5] The victims of the accused's crimes have suffered severe emotional and psychological trauma, as was evident during the trial proceedings. Multiple victims broke down in uncontrollable tears while testifying. Some collapsed in court, while others fainted and required medical assistance, including being transported to hospital via ambulance.

The victims were forced to relive the horrifying events during their testimony, causing significant emotional distress. Shockingly, the accused was observed laughing during portions of their testimony—an unusual and disturbing response that underscored his lack of empathy for the victims' suffering.

Arguments by the parties

[6] Counsel for the defense argued that accused's upbringing should be considered as well as the youthfulness of the accused. The accused was 26 years old when these offences were committed. He was in custody since his arrest in 2022. That the accused did not commit these offences with violence. That given the accused's upbringing, he

requires rehabilitation. That he was in custody since his arrest. That the accused's sentence should be run concurrently with the sentences of life imprisonment.

[7] The state argued that there are no substantial and compelling circumstances to deviate from the minimum sentences and that when he committed these crimes, he had already passed the age of majority. He was 26 years to be precise. Therefore, he cannot claim youthfulness as his reason to be given less sentence. Court should consider the trauma which the victims had suffered including secondary trauma while they were testifying thereby relieving the ordeal again. The accused should be given a minimum sentence for all these offences which he had been found guilty of.

[8] The court must balance the accused's personal circumstances with the interests of the victims and society. Following this, the court must consider whether there are substantial and compelling circumstances to deviate from the minimum sentences.

In *S v Malgas* 2001 (1) SACR 469 (SCA), it was held that under these statutes, the court must impose minimum sentences unless "substantial and compelling circumstances" justify a lesser sentence. This framework was designed to ensure that serious offenses are met with appropriately severe punishments while still allowing judicial discretion when justified by case specifics. Courts are required to impose sentences with the understanding that the legislature has mandated life imprisonment (or the specific prescribed period of imprisonment) as the standard sentence for listed crimes under specified conditions. Unless there are genuinely compelling reasons to deviate, these crimes should elicit a severe, standardized, and consistent response from the courts.

[9] The personal circumstances of the accused are relevant in assessing whether there are grounds to depart from the minimum sentence. And these personal circumstances were obtained from the pre-sentence report.

Age and family background: While the court considers that the accused is 34 years old, a father of three children, and lacks stable family support, these factors are far outweighed by the seriousness and frequency of his crimes. He was not a productive

member of society and lived off criminal activity as indicated from the pre-sentence report. His prior conviction for assault with intent to do grievous bodily harm and his continued threats to his ex-partner indicate a pattern of violence and lawlessness.

Accused could not sustain jobs, therefore, he resorted to living out of crime. He had no skill at all. His highest standard passed is grade 9.

Absence of Remorse

The accused showed no remorse throughout the trial. He laughed during the victims' testimonies, mocked their suffering, and on the pre-sentence report he tried to blame his actions on alleged bewitchment. This lack of insight or contrition is aggravating. The conduct of the accused during trial, particularly his mocking demeanor and laughter during victim testimony—demonstrates a total lack of empathy or regret. His actions were calculated, repeated, and predatory in nature. They show a pattern of criminality and complete disregard for the rule of law and the sanctity of human dignity.

Community involvement: the accused has terrorized the communities in which he lived by committing endless crimes against them and their properties. There was nothing positive which he contributed to in his community.

Time spent in custody: He has been in custody since his arrest, awaiting trial, which can be seen as a mitigating factor.

Grief and loss: The accused lost both his mother and grandmother while still young, which could be seen as an additional emotional burden to him. But his sister denies that these should be regarded as an emotional burden in that she regards what accused did, as a choice influenced by peer pressure.

Impact on Victims

[10] The emotional and psychological trauma inflicted on the victims is profound. The victims cried uncontrollably, some collapsed and fainted, and required medical assistance. This indicates deep, lasting harm. Victim impact evidence further supports the devastating consequences of the accused's actions.

Deterrence, Retribution, and Protection of Society

[11] Sentencing in this case must reflect the goals of general deterrence, retribution, and protection of society. The court must send a clear message that gender-based violence, rape, and violent robbery will be met with the harshest penalties. Society must be protected from an individual who poses such a grave and ongoing threat.

Nature and Gravity of the Offences

[12] The accused committed a spree of violent sexual and property-related crimes over numerous incidents, spanning multiple victims. Many of these were planned, premeditated, and executed with violence, using weapons such as firearms and knives. The use of violence, repeated victimization, and the nature of sexual violence demand the highest level of condemnation, remorse for his conduct and attributes his actions to alleged bewitchment.

The offences committed by the accused are of the most egregious nature. They involve brutal violations of the victims' physical and psychological integrity, including repeated acts of rape, often committed during home invasions, with the use of dangerous weapons. The trauma suffered by the victims is extensive and enduring. The courtroom was witness to the devastating emotional toll on these individuals during trial proceedings.

[13] While the accused's personal circumstances: that he is a bread winner, that he was in custody awaiting trial, that he had difficult upbringing, that he lost his parents and grandparent while still young are compelling, the nature and seriousness of the offenses weigh heavily against him:

Interests of Society

[14] In our law, retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be accorded to each, according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that rehabilitation of the offender will consequently play a smaller role. Moreover, as pointed

out in *S v Malgas* 2001 (1) SACR 469 (SCA), where the court finds that it is not bound to impose a prescribed sentence, the sentence to be imposed in lieu of the prescribed sentence should be assessed, paying due regard to the benchmark which the legislator provided'. The offenses committed by the accused are socially egregious and violate fundamental human rights especially section 10 of the Constitution of the Republic of South Africa Act, No. 108 of 1996 which provides that "Everyone has inherent dignity and the right to have their dignity respected and protected". A strong message must be sent to potential offenders that such actions will not be tolerated, which justifies the imposition of minimum sentences under normal circumstances. In *S v Kruger* 2012 (1) SACR 369 (SCA) Shongwe JA (Harms AP and Plaskett AJA concurring) confirmed that '[p]unishing a convicted person should not be likened to revenge. It must have all the elements of and purposes of punishment, prevention, retribution, individual and general deterrence and rehabilitation'.

[15] The accused's circumstances are standard normal circumstances. His contributions to his family with proceeds of crime, his period of pre-trial detention, cannot be regarded as substantial and compelling circumstances. His actions were premeditated, calculated, and persistent over a period of time, which may diminish the weight of any factor that might be a mitigating factor. In *S v Vilakazi* 2009(1) SACR 552 (SCA) at para 58, Nugent JA said that in cases of serious crimes like these, the personal circumstances of the offenders by themselves will necessarily recede into the background. Once it becomes clear that crime is deserving of a substantial period of imprisonment.

The question of whether the accused is married or single, whether he has two children or three, whether he is in employment are themselves largely immaterial to what the period should be and those seem to be the kind of flimsy reasons, or flimsy grounds that *Malgas'* case said should be avoided. But they are nonetheless relevant in other respects. A material consideration is whether the accused can be expected to offend again. While that can never be confidently predicted, his circumstances might assist in making at least some assessment. Accused's actions during the commission of these crimes show a disregard for the law and the rights of others.

[16] This Court has considered the personal circumstances of the accused; however, they pale in comparison to the severity and multiplicity of the offences committed. The interests of society, the harm suffered by the victims, and the need for deterrence overwhelmingly demand the imposition of the harshest penalties available under our law. There are no substantial and compelling circumstances which I could find in the personal circumstances of the accused and on the totality of the evidence.

[17] The defense counsel submits that the sentences should run concurrently. In *S v Mokela* 2012 (1) SACR 431 (SCA) at [11] the court noted that an order that sentences run concurrently is called for where the evidence shows that the relevant offences are 'inextricably linked in terms of the locality, time, protagonists and, importantly, the fact that they were committed with one common intent'. Again, in *S v Sekwati* (unreported, GP case no A445/2015, 14 September 2016) at [13], where Makgoba J wrote as follows:

'It is a salutary practice that if an accused is sentenced in respect of two or more related offences, sentencing court should have regard to the cumulative effect of the sentences imposed in order to ensure that the total sentence is not disproportionate to the accused's blameworthiness in relation to the offences in respect of which the accused has to be sentenced'

[18] Further again, it is important to emphasize that sentencing the accused is within the discretion of the trial court. In *S v Karan* 2019 (2) SACR 334 (WCC) at [21] where Davis AJ (Erasmus J concurring) relied on the following statements by Terblanche A *Guide to Sentencing in South Africa* 3 ed (2016) at 15:

'That the power to impose a sentence on a convicted offender is the domain of the courts, the judicial authority in South Africa, is widely accepted. This principle is so deeply embedded in our common law that it is difficult to find any source containing a statement to this effect.'

[19] Accordingly, the following sentences are appropriate.

1. Rape of adult count 1, 3, 6, 8, 15, 19, 21, 24, 26, 27, 28, 29, 32, 34, 36, 40, 42, 44, and 46, the accused is sentenced for 10 years on each count.
2. Count 13 rape of a minor. The accused is sentenced to life imprisonment
3. House breaking with intent to rob and robbery with aggravating circumstances, count 2, 9, 12, 14, 20, 23, 25, 31, 33, 41, and 45. The accused is sentenced to 15 years imprisonment on each count
4. Count 4 and 7, houses breaking with the intent to commit rape and rape, the accused is sentenced to 10 years imprisonment on each count.
5. Count 38 and 43 house breaking with intend to steal and theft. The accused is sentenced to 7 years imprisonment on each count.
6. Count 10 sexual assault. The accused is sentenced to 5 years imprisonment.
7. Count 22 attempted to rape. The accused is sentenced to 8 years imprisonment
8. Count 30, 37, and 39 Robbery with aggravating circumstances. The accused is sentenced to 15 years imprisonment on each count.
9. Count 35, theft. The accused is sentenced to 2 years imprisonment.

In terms of Section 280(2) Act 51 of 1977 the Court directs that the sentences imposed in respect of all these counts shall run concurrently with the sentence of life imprisonment.

Ancillary orders

1. In terms of Section 103 (1) of firearms control Act 60 of 2000 the court makes no order. This means the accused is deemed unfit to possess a firearm.
2. In terms of section 103 (4) of firearms controls act 60 of 2000. The court has made an order for the search and seizure of the accused's premises for firearms, ammunitions licenses and our competency certificate.
3. In terms of section 299A (1) of Act 51 of 1977, the court informs the complainants that they have a right to make representations to the commissioner of the correctional services when placement of the prisoner on parole is considered, to attend any relevant meetings of the parole board, when the accused's parole is

to be decided. This is subject to the directive issued by the Commissioner of Correctional Services under section 4 of the Correctional Services Act

4. Accused has the right to appeal the convictions and sentences which were imposed on him today. You can request legal aid attorneys or an attorney where you pay out of your own pocket to assist you in bringing a substantive application for leave to appeal the conviction and sentences, within 14 days of this sentence. If your application is later than 14 days then you should apply for the condonation, to be allowed an extension of time to file the application for leave to appeal out of time.

M. Munzhelele
Judge of the High Court, Pretoria

Heard: 28-October 2024 - 20 May 2025

Delivered: 20 May 2025

Counsel for the State: Adv. Tshabalala

Counsel for the Accused: Ms. Masete

