

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: A69/2024

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

04 June 2025

In the matter between:

L MAHLAKANYA

Appellant

and

THE STATE

Respondent

JUDGMENT

van der Westhuizen, J (Yende AJ, concurring)

- [1] The appellant appealed against his conviction and sentence on 9 March 2023 on a charge of rape of a minor in the Regional Court held at Pretoria.

- [2] He was sentenced to life imprisonment and declared to be unfit to possess a firearm in terms of section 103(1) of the Firearms Act, 60 of 2000.
- [3] In terms of section 10 of the Judicial Matters Amendment Act, 42 of 2013, he enjoyed an automatic right of appeal when sentenced to life imprisonment.
- [4] Initially the appellant pleaded not guilty to the charge of rape of a minor. However, after four witness had testified on behalf of the State, he made admissions in terms of section 220 of the Criminal Procedure Act, 51 of 1977 (the Act). The legal representative appearing on behalf of the accused, conceded that the admissions made in terms of section 220 of the Act rendered a plea of guilty. The appellant was then convicted of the crime charged. There is no appeal against conviction.
- [5] When the appeal came before this court, the Court building was without electricity. The counsel representing the appellant and the respondent requested that the appeal be heard in chambers rather than postponing the hearing of the appeal. The request was granted. Both counsel made oral submissions in addition to their respective heads of argument.
- [6] On the issue of sentence, the State proved various previous convictions and relied upon a victim impact statement. None of the previous convictions related to the rape of a minor or otherwise. The appellant did not lead any evidence in mitigation and relied on submissions made on his behalf by the legal representative. The facts placed before the court in mitigation were: his age, 53 years; he was married and his wife was unemployed; he had 3 children who were still dependent upon him; he only had a grade 7 qualification and was self-employed as a hawker and supported his family; he was trial awaiting for three years and three months; alcohol apparently played a significant role in the perpetration of the crime; there was a possibility of rehabilitation.

- [7] The court *a quo* found no substantial and compelling circumstances to deviate from the prescribed minimum sentence. Counsel appearing for the appellant submitted that the trial court had erred in not finding substantial and compelling evidence in the cumulative effect of the aforementioned personal circumstances of the appellant. Furthermore, counsel submitted that the sentence was disproportionate to the offence and consequently on its own constituted substantial and compelling circumstances. There is no merit in the last submission. It is a prescribed sentence. It cannot on itself find mitigation.
- [8] It is trite law that a court of appeal can only interfere with a sentence of a court *a quo* where it is found that the court had misdirected itself, or where the sentence was inappropriate to the crime.¹ The imposition of a sentence falls within the discretion of the court, and in the absence of any misdirection on the part of the court indicating that the exercise of that discretion was inappropriately or unreasonably exercised, a court of appeal cannot interfere with the imposed sentence. In the present instance, the appellant failed to show or prove any misdirection on the part of the court *a quo*.
- [9] The principles enunciated in *State v Malgas*² find application in this matter. Applying those principles, this court cannot interfere. The personal circumstances of the appellant, on their own or cumulatively, do not constitute substantial and compelling circumstances.
- [10] The admitted previous convictions of the appellant indicate a propensity to commit offences and clash with the law. The possibility for rehabilitation has not been proven by the appellant.
- [11] In my view, the appeal stands to be dismissed.

¹ See *Rex v Zulu et al* 1951(1) SA 489 (N)

² 2001(1) SACR 469 (SCA)

I propose the following order:

The appeal against sentence is dismissed.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

On behalf of Appellant:
Instructed by:

Mr MB Kgagara
Legal-Aid, Pretoria

On behalf of Respondent:
Instructed by:

Adv T Nyakama
National Director of Public Prosecutions

Date of Hearing:

18 February 2025

Judgment Delivered:

04 June 2025