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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Reportable/Not Reportable

Appeal No: AR213/2023

In the matter between:

MDUDUZI KHONJWAYO

Appellant

and

THE STATE

Respondent

ORDER

On appeal from: Regional Court, Pietermaritzburg (Mr BD Dehaloo sitting as court of first instance):

1. The appeal is dismissed
2. The sentence imposed by the court *a quo* on the appellant is hereby confirmed.

JUDGMENT

Marion AJ (Radebe J concurring)

Introduction

[1] This is an appeal against the conviction and sentence of the appellant, who was convicted of three (3) counts of rape in the Regional Court, Pietermaritzburg, by the learned magistrate, Mr BD Dehaloo. He was thereafter sentenced to life imprisonment after the trial court found no substantial and compelling circumstances to deviate from the prescribed minimum sentence contemplated by s 51(1), read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the CLAA). By virtue of the provisions of s 309(1)(a) of the Criminal Procedure Act 51 of 1977 (the CPA), the appellant exercised his automatic right of appeal to challenge both his conviction and sentence. The appellant was represented by Ms Anastasiou-Krause and the State was represented by Ms Sokhela.

The facts

[2] The facts presented by the State were not complex and three witnesses were called to testify. The complainant testified that on or about 23 July 2018, 25 July 2018 and 27 July 2018 the appellant did unlawfully rape her. She was 12 years old when these offences were committed. The complainant resided at the same homestead with the appellant, her mother Ms T[...] M[...] (Ms M[...]) and the appellant's brother, at an area known as Dambuza. The complainant described the home as a two-roomed house where the appellant and her mother slept in the bedroom, while she slept on the floor in the kitchen. The appellant's brother, Mr Thulani Khonjwayo (Thulani) came to live with them in May 2018. He also slept on the kitchen floor. The complainant testified that her mother did not reside at the homestead on a daily basis as she worked away from home during the week and only returned on weekends. She (the complainant) normally watched television in the bedroom and thereafter slept on the bedroom floor, if there were guests. She stated that on 23 July 2018 at approximately 20h30, while she was asleep, she felt someone touching her and requesting her to wake up. It was the appellant. He twice requested her to come and sleep with him, but she refused to do so. He physically lifted her up and placed her on the bed and asked her to take off her underwear. She refused. The appellant then forcefully removed her underwear. He thereafter removed his trunks, opened her legs and inserted his penis into her vagina. He made up and down movements. It was painful. The complainant cried and pleaded with the appellant to stop. When he stopped, a white substance came out of her. He thereafter advised her not to report this to her mother otherwise he would kill her.

[3] On 25 July 2018, the appellant again requested the complainant to come and sleep with him. She refused, and he carried the complainant to his bed and forcefully removed her underwear and raped her. On this occasion, however, he did not threaten her. The same course of events took place on 27 July 2018, when the appellant requested the complainant to come and sleep with him. She once again refused, but the appellant raped her. The complainant testified that the appellant had raped her again on another occasion during the day, but she could not recall the date. The complainant described each act of rape in detail. The complainant was assaulted by the appellant. It was at this stage that the complainant requested permission to go and live with her aunt in Caluza, which is also in Pietermaritzburg. After a week, she reported the rapes to her mother. She was taken to a doctor at Edendale Hospital and examined. The complainant testified that prior to these incidents she had a good father-daughter relationship with the appellant.

[4] Ms M[...], the complainant's mother testified that the appellant was not the biological father of the complainant. They had lived together as husband and wife from 2013. She stated that she worked away from home and only returned on weekends or on a month end. Ms M[...] testified that at some stage they informed the complainant that the appellant was not her biological father. The three of them sat down and discussed this issue. She further stated that during the first week of August 2018, upon her return home she bathed the complainant and discovered that she had an injury to her eye, which was bloodshot. Upon questioning the complainant, it transpired that the appellant had assaulted her. The complainant was then relocated to an aunt's house in Caluza. This situation led to Ms M[...] moving in with the neighbours as she did not want to live with the appellant after the assault. At this point the complainant had not informed her mother that the appellant had raped her on several occasions. Around 15 August 2018, the complainant telephoned her mother to inform her that she was not feeling well and requested advice on whether to go to a clinic or school. Her mother advised her to stay at home. It was at this time that the complainant reported to her mother that the appellant had raped her. The mother returned home and confronted the appellant who apologised for his actions. The appellant's uncles were notified and arrived at the homestead where the issue of compensation was also discussed. Ms M[...] testified that she did not want

compensation for the complainant but rather justice. Pursuant to these incidents of rape on her daughter, she ended her relationship with the appellant.

[5] Dr Langelihle Ngubane was the third state witness. He practiced at the Thuthuzela Care Centre at Edendale Hospital, which caters for sexual assault victims. He testified that on 15 August 2018 at 18h05 he examined the complainant and completed the J88 form where he recorded his findings. He recorded the complainant's age as 12. Dr Ngubane recorded that the complainant reported that she was raped by a known male on three occasions in July 2018. She reported that she had only informed her mother about the rapes on 15 August 2018. The doctor recorded his medical findings that the hymen was annular in shape, with a 2.3 cm diameter opening. The posterior rim was absent, and he noted a foul-smelling yellowish discharge. The doctor concluded that there was evidence of previous vaginal penetration with a blunt object and evidence of a sexually transmitted disease.

[6] The appellant testified in his defence and called his uncle Mr Themba Samson Hlela (Mr Hlela) as a witness. The appellant testified that he was employed as a security guard, but he was dismissed on 1 June 2018. He confirmed that the house in Dambuza was a two-roomed house with a kitchen and a bedroom. He also confirmed that the complainant slept in the kitchen whilst he and the complainant's mother slept in the bedroom. He stated that if visitors arrived the complainant would sleep on the floor in the bedroom. The appellant testified that his brother, Thulani, came to live with them during May 2018. He stated that the complainant returned from her visit to her maternal aunt on 17 July 2018 when schools reopened. The appellant's version, however, was that the complainant left to go and stay with her aunt, B[...] at Caluza from 20 July 2018, as she had a quarrel with her mother. This quarrel related to doing chores at home. The appellant denied the allegations of rape against him by the complainant and stated that the complainant was not resident with him during the dates of the incidents. The appellant also denied that he had a TV in his bedroom at that stage, as alleged by the complainant. He testified that he had suggested that the complainant be taken to the hospital after the allegations of rape had been made against him. He called his uncle, Mr Hlela, who took the complainant and her mother to be examined by the doctor. The appellant also denied admitting to

raping the complainant or apologising for such conduct. The appellant further denied assaulting the complainant at any time.

[7] The appellant surmised that the aunt wanted to take the complainant to live with her and hence influenced her to fabricate these allegations against him. Under cross-examination the appellant admitted that his brother Thulani was living with him at the time of the rapes. This contradicted the version that was put to the complainant under cross-examination that Thulani never lived at their homestead. The appellant also denied that the complainant's mother stayed at her place of employment. The appellant admitted that his two uncles, Mr Hlela and Mr Gceba, were present when the allegations of rape were made against him. He stated that it was a mistake earlier when it was put to the complainant's mother that Mr Gceba was not present. Surprisingly, the appellant did not dispute the doctor's findings in the J88 of repeated sexual penetration, nor what was stated in that report by the complainant. However, when questioned about each date and act of rape, the appellant disputed same and averred that he and the complainant were not living at the same homestead during those relevant dates.

[8] Mr Hlela testified and confirmed that he was called by the appellant to assist in taking the complainant to hospital. He stated that he only became aware of the rape allegations against the appellant upon the mothers' return from the hospital. He did not hear any talk about compensation or an apology. The day after having taken the complainant to the hospital, he became aware that the appellant was arrested. Upon cross-examination he stated that as far as he was told, the reason for the complainant going to the hospital was that she had a throat infection.

Ad conviction

[9] Having regard to the totality of the evidence, I am of the view that the court *a quo* correctly rejected the appellant's version. The evidence tendered by the defence witness, Mr Hlela, did not assist the appellant in any way. He only corroborated the appellant's version in so far as there was no apology or negotiation for compensation. The complainant was a single witness in relation to the three incidents. She testified in a satisfactory manner in all material respects. The

appellant conceded that the court *a quo* correctly found that the cautionary rule was applicable in assessing the complainant's evidence.

[10] The appellant's grounds of appeal as set out in his heads of argument aver that the magistrate did not carefully scrutinise the complainant's evidence. The basis for this argument was that the complainant failed to report these rape incidents at her first available opportunity. The last incident of rape was 27 July 2018, and the complainant only reported them to her mother on 15 August 2018. A further averment made by the appellant was that the appellant's brother was present during the rapes, and the complainant could have screamed for help. The appellant argued that her failure to scream for help was improbable in the circumstances and the basis for which the court did not properly apply the cautionary rule. With respect, the appellant's heads of argument lacked merit and failed to provide a proper basis for any of the grounds of appeal. The complainant testified that the appellant had threatened her and hence she did not scream. She also stated that she thought that the appellant's brother was aware of what was happening and did nothing to help.

[11] In my view, the court *a quo* carefully assessed the complainant's evidence as well as the applicable case law. In *S v Dyira*¹ the court held that:

"The requirement in such a case is, as always, proof of guilt beyond reasonable doubt, and, to assist the courts in determining whether the onus is discharged, they have developed a rule of practice that requires the evidence of a single witness to be approached with special caution (*R v Mokoena* 1956 (3) SA 81 (A) at 85, 86). This means that the courts must be alive to the danger of relying on the evidence of only one witness, because it cannot be checked against other evidence. Similarly, the courts have developed a cautionary rule which is to be applied to the evidence of small children (*R v Manda* 1951 (3) SA 158 (A) at 162E - 163E). The courts should be aware of the danger of accepting the evidence of a little child because of potential unreliability or untrustworthiness, as a result of lack of judgment, immaturity, inexperience, imaginativeness, susceptibility to influence and suggestion, and the beguiling capacity of a child to convince itself of the truth of a statement which may not be true or entirely true, particularly where the allegation is of sexual misconduct, which is normally beyond the experience of small children who cannot be expected to have an understanding of the physical, social and moral implications of sexual activity (*S v Viveiros*

¹ *S v Dyira* 2010 (1) SACR 78 (ECG) para 6.

[2000] 2 All SA 86 (SCA) para 2). Here, more than one cautionary rule applies to the complainant as a witness. She is both a single witness and a child witness. In such a case the court must have proper regard to the danger of an uncritical acceptance of the evidence of both a single witness and a child witness (Schmidt *Law of Evidence* 4-7)."

[12] In my view, the court *a quo* correctly cited the principles from the applicable case law relating to both a single witness and child witness. The magistrate was aware of the dangers of convicting on the evidence of a single witness, as this appears from his judgment. The court *a quo* referred to the case of *S v Artman*² and stated that:

"the court should examine the evidence in order to satisfy itself that the evidence given by the witness is clear and substantially satisfactory in all material respects, although corroboration is not a prerequisite for a conviction, a court will sometimes in appropriate circumstances seek corroboration which implicates the accused before it will convict. Failing corroboration, a court will look for some feature in the evidence which gives the implication by a single child witness enough of a hallmark of trustworthiness to reduce substantially the risk of wrong reliance upon his or her evidence."³

Holmes JA stated in *Artman* that "the exercise of caution must not be allowed to displace the exercise of common sense."⁴

[13] In most rape and sexual assault cases the complainant is a single witness. In *Stevens v S*⁵ the court stated:

"In terms of section 208 of the Criminal Procedure Act 51 of 1977, an accused can be convicted of any offence on the single evidence of any competent witness. It is, however, a well-established judicial practice that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility."

[14] In the present case, the court *a quo* correctly found that the complainant "answered all the questions put to her without hesitation and ease. She was coherent and did not contradict herself in any way."⁶ The complainant testified about

² *S v Artman and another* 1968 (3) SA 339 (A) (*Artman*).

³ Judgment page 161 line 14-23.

⁴ *Artman* at 341C-D.

⁵ *Stevens v S* [2005] 1 All SA 1 (SCA) para 17. ⁶ Judgment page 163 line 18-20.

a further incident that occurred during the day, but she could not recall the date. However, the prosecution did not pursue this evidence as the appellant was not charged with this count. Under cross examination the court *a quo* found the complainant to have answered all questions without hesitation or contradiction. The complainant's evidence was correctly evaluated as satisfactory in all material respects. The complainant's mother corroborated her evidence in so far as the reasons why she wanted to go and live with her aunt in Caluza. It should be noted that corroboration in matters like these is not a strict requirement. The complainant's mother confirmed the report of rape made by the complainant to her. The complainant's mother testified that the complainant persistently told her that there was something she wanted to tell her prior to the report. The complainant testified that the appellant had threatened to kill her. The delay in reporting the rapes is accounted for as the complainant feared the appellant. This was more so after having been assaulted by the appellant. Her mother also corroborated her version that when the appellant was confronted about the allegations, he apologised and further discussions ensued in respect of compensation with the uncles present. The complainant's mother refused compensation as she wanted "justice" for her child. The court *a quo* accepted the mother's evidence to be satisfactory in all material respects. The doctor's evidence in respect of the history and injuries to the complainant, as reflected in the J88 also corroborated the complainant's version in material respects. The doctor concluded that there was evidence of previous vaginal penetration and evidence of a sexually transmitted disease. The absence of the posterior rim to the hymen confirmed repeated penetration. The doctor explained that this was why no clefts and notches were present.

[15] The appellant's version was a bare denial. The appellant denied that the complainant was even residing with him at the time of the incidents of rape. He also stated that his brother, Thulani, was not residing with him in July 2018. The appellant's version that the aunt created the rift between the complainant and himself and that she wanted the complainant to reside with her which caused the complainant to fabricate the rape charges, was never put to the complainant. The version of the appellant that the rapes were first reported to her aunt, who thereafter reported it to the complainant's mother, was never put to the complainant nor to her mother. Under cross examination the appellant testified that he made a mistake and

that his brother was present at his home in July 2018. Initially the appellant disputed that his uncle, Mr Gceba, was present when the complainant's mother made these allegations against him and thereafter reneged on this, accepting that this was a mistake and that both uncles (Mr Hlela and Mr Gceba) were present. Most importantly, the appellant did not refute the doctor's evidence. Mr Hlela, the uncle, who the appellant called to testify on his behalf, exposed a bias under cross examination, in favour of the appellant, who he considered to be a son. It was improbable that he did not know about the allegations of rape against the appellant, when he rushed to take the complainant and her mother to the hospital. The appellant had testified that he told his uncle about the allegations when he telephoned him for assistance. The court *a quo* correctly found that the appellant had contradicted himself in material respects and rejected his evidence as false beyond a reasonable doubt. The court further found that Mr Hlela's evidence did not assist the appellant's case. His evidence was biased in favour of the appellant which showed that he lacked credibility as a witness.

[16] The court *a quo* looked at the evidence in totality and found that there was sufficient corroboration to accept the complainant's evidence. The State's evidence was found to be consistent in all material respects. On a conspectus of all the evidence, the appellant was correctly convicted of three counts of raping the complainant. The result, in my view, is that the conviction on three counts of rape should stand.

Ad sentence

[17] The appellant submitted that the court *a quo* erred in finding that no substantial and compelling circumstances existed to impose a lesser sentence than the minimum prescribed by the legislature. The appellant further submitted that the court *a quo* ought to have placed greater emphasis on the following facts: that the appellant was a 35-year-old first offender; that he was employed as a security guard earning R4 200 per month; and that he supported his five siblings. Counsel for the appellant argued that the sentence of life imprisonment was excessive and inappropriate to a degree that would empower this court to intervene.

[18] Ms Sokhela argued that the court *a quo* had properly considered the triad as expounded in *S v Zinn*⁶ and that the minimum sentence of life imprisonment was applicable. She further argued that the court *a quo* correctly found that there were no substantial and compelling circumstances for the court to deviate from the minimum sentence. The court *a quo* had carefully considered the interests of the complainant and that of the community and that the sentence of life imprisonment was just in the circumstances.

[19] Section 51(1) of the CLAA requires a minimum prescribed sentence of life imprisonment to be imposed for a conviction of rape where the complainant is raped more than once or where the complainant is a child under the age of 16 years, unless in terms of s 51(3)(a), substantial and compelling circumstances exist that justify a lesser sentence. The complainant in this matter was 12 years old and was raped on multiple occasions.

[20] In *Malgas v S*,⁷ the Supreme Court of Appeal stated that the imposition of a minimum sentence of life imprisonment for the crimes specified in section 51, which includes multiple rapes means that it is “no longer to be ‘business as usual’ when sentencing for the commission of the specified crimes.”

[21] In *S v Kwanape*,⁸ quoting *Malgas*, the court stated that a sentence of life imprisonment must be ordinarily imposed to ensure “severe, standardised, and consistent response from the courts” for the crimes specified in section 51, “unless there were. . .truly convincing reasons for a different response.”

[22] The prescribed minimum sentence can be deviated from only if substantial and compelling circumstances exist. The Supreme Court of Appeal in *Malgas*⁹ interprets this as meaning:

“The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the

⁶ *S v Zinn* 1969 (2) SA 537 (A).

⁷ *Malgas v S* [2001] 3 All SA 220 (A) (*Malgas*) para 7.

⁸ *S v Kwanape* [2012] ZASCA 168; 2014 (1) SACR 405 (SCA) para 14, *Malgas* para 8.

⁹ *Malgas* para 9.

policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances. . .the ultimate cumulative *impact* of those circumstances must be such as to *justify* a departure.”

[23] In assessing whether substantial and compelling circumstances exist, the Supreme Court of Appeal also held:¹⁰

“I. If 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.

J. In so doing, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the bench mark which the Legislature has provided.”

[24] In *Zinn* the court held that a factual enquiry has to be conducted to determine a sentence that is just and fair, and includes that the following must be considered:

- (a) the nature of the crime,
- (b) the personal circumstances of the person convicted, and
- (c) the interests of society.

In *Malgas*¹¹ the court reiterated the *Zinn* principles, whilst highlighting the discretion of the trial court.

“...a trial court will consider the particular circumstances of the case in the light of the well-known triad of factors relevant to sentence and impose what it considers to be a just and appropriate sentence.”

[25] In *S v Jansen* the court stated the following:¹²

“Rape of a child is an appalling and perverse abuse of male power. It strikes a blow at the very core of our claim to be a civilised society. . . It is utterly terrifying that we live in a society where children cannot play in the streets in any safety; where children are unable to grow up in the kind of climate which they should be able to demand in any decent society, namely in freedom and without fear. In short, our children must be able to develop their lives in an

¹⁰ *Malgas* para 25.

¹¹ *Malgas* para 12.

¹² *S v Jansen* 1999 (2) SACR 368 (C) at 378G-379B.

atmosphere which behoves any society which aspires to be an open and democratic one based on freedom, dignity and equality, the very touchstones of our Constitution.”

The court must also keep the objectives of sentencing in mind, which include retribution, deterrence, prevention and rehabilitation.¹³

[26] The court *a quo* referred to the case of *S v Matyityi*¹⁴ where the Supreme Court of Appeal provides guidance on factors that need to be taken into account in light of the minimum sentence regime. The trial court clearly understood that the starting point was not a “clean slate” where he could inscribe any sentence he wished to. *Malgas* emphasised the following:

“[8]. . . a court was not to be given a clean slate on which to inscribe whatever sentence it thought fit. Instead, it was required to approach that question conscious of the fact that the legislature has ordained life imprisonment or the particular prescribed period of imprisonment as the sentence which should *ordinarily* be imposed for the commission of the listed crimes in the specified circumstances. In short, the legislature aimed at ensuring a severe, standardised, and consistent response from the courts to the commission of such crimes unless there were, and could be seen to be, truly convincing reasons for a different response. When considering sentence the emphasis was to be shifted to the objective gravity of the type of crime and the public's need for effective sanctions against it. . .

[9]. . . The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances. Nor were marginal differences in the personal circumstances or degrees of participation of co-offenders which, but for the provisions, might have justified differentiating between them. But for the rest I can see no warrant for deducing that the legislature intended a court to exclude from consideration, *ante omnia* as it were, any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders.”

¹³ *S v M (Centre for Child Law as amicus curiae)* [2007] ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC) para 109.

¹⁴ *Matyityi* para 17.

[27] In this matter, the magistrate considered the seriousness of the offence of rape of a minor and the prevalence of such crimes in South Africa. In *Maila v S* the Supreme Court of Appeal stated:¹⁵

“The message must be clear and consistent that this onslaught will not be countenanced in any democratic society which prides itself with values of respect for the dignity and life of others, especially the most vulnerable in society: children. For these reasons, this Court is not at liberty to replace the sentence that the trial court imposed. For an uncle, who is in the position of trust just as a father, to rape his own niece is unconscionable and deserves no other censure than that imposed by the trial court: life imprisonment. The sentence is not disproportionate to the serious offence that the appellant committed on a 9-year-old child, his niece. The sentence is, thus, justified in the circumstances.”

It is evident that the rape of women and children is rife in our country. The statistics of these crimes are shocking and have reached pandemic proportions. In my view, the court *a quo* carefully considered all factors before it before arriving at a suitable sentence. The appellant was in a relationship with the complainant’s mother and practically raised the complainant as a father. The relationship between the appellant and the complainant was good until these incidents of rape occurred.

[28] The court *a quo* took into account that the appellant was 35 years old, single and had no children. He was a first offender who had spent over three years in custody at the time of sentencing. He had been employed as a security guard however, from his own evidence, he informed the court that he was dismissed on 1 June 2018. In mitigation of sentence, his attorney advised the court that he was not dismissed but rather suspended. In *S v Vilakazi*¹⁶ Nugent JA stated that

“Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of ‘flimsy’ grounds that *Malgas* said should be avoided.”

[29] In my view, the court *a quo* applied the applicable sentencing guidelines and principles in balancing all the relevant factors before him. The magistrate considered the appellant’s personal circumstances, ie that he was a first offender and the time

¹⁵ *Maila v S* [2023] ZASCA 3 para 60.

¹⁶ *S v Vilakazi* [2008] ZASCA 87; 2009 (1) SACR 552 (SCA) para 58.

spent in custody. His attorney argued that he was capable of being rehabilitated. In *S v Dyantyi*¹⁷ the court aptly stated that “[w]ithout expression of contrition, any hope of rehabilitation becomes illusory and thus an unrealistic expectation”.

[30] In looking at the interests of the victim the appellant took advantage of the complainant who respected him as her father. The victim impact statement that forms part of the record clearly shows the psychological effect that these rapes had on the complainant and that she would endure post-traumatic stress for a long time after. The letter from the complainant’s mother also indicates to the court the effects the rapes had on her as a mother. The court took all three counts together for the purposes of sentencing and took into account that not doing so would have a severe overall effect in sentencing the appellant. I am of the view that the court *a quo* assessed all factors before him before doing a balancing act to arrive at a fair and just sentence.

[31] In *Malgas*,¹⁸ the court held that:

“an appellate court may. . .be justified in interfering with the sentence imposed by the trial court. . .when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as ‘shocking’, ‘startling’ or ‘disturbingly inappropriate’.”

[32] I can find no reason to interfere with the sentence imposed by the court *a quo* as there is no misdirection on the learned magistrate’s part. The prescribed minimum sentence imposed in this case does not result in an injustice to the appellant. The sentence of life imprisonment in the circumstances of this case is not “shocking”, “startling” or “disturbingly inappropriate”. The court further fulfilled the objectives of sentencing namely, retribution, deterrence, prevention and rehabilitation in his evaluation on sentence. This type of sentence will prevent and deter him from committing such an offence again and will send a clear message to all like-minded people wanting to commit offences like these on children. The appellant will be able to participate in the rehabilitation programmes offered in prison.

¹⁷ *S v Dyantyi* 2011 (1) SACR 540 (ECG) para 26.

¹⁸ *Malgas* para 12.

Order

[33] In the result:

1. The appeal is dismissed.
2. The sentence imposed by the court *a quo* on the appellant is hereby confirmed.

MARION AJ

I agree, and it is so ordered

RADEBE J

Heard: 25 October 2024

Judgment: 13 June 2025

Appearance:

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