



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

CASE NO: CC 12/2023

In the matter between:

THE STATE

and

ELDRIDGE AFRICA

Accused no 1

DURANTH PRINCE

Accused no 2

Coram: Justice J Cloete

JUDGMENT ON SENTENCE DELIVERED ON 21 AUGUST 2025

CLOETE J:

[1] Sentencing is one of the most difficult tasks faced by a court given the consequences to the accused, which have to be balanced against the nature of their crimes, the impact thereof on their victim and loved ones, and the interests of society as a whole.

[2] This involves weighing up each accused's personal circumstances, the seriousness of the offences, and the interests of civil society. In so doing, the court is duty bound not to over-emphasise one factor at the expense of the others, and should also be mindful of the need, if reasonably possible, to blend the sentence to be imposed with mercy. Accused no 1 (Mr Eldridge Africa) has been convicted on one count of murder of a 28 year old woman by common purpose. Accused no 1 has also, together with accused no 2 (Mr Duranth Prince), been convicted on one count of attempting to defeat or obstruct the administration of justice by transporting the body of the deceased to an open field, dumping it there, and returning the following day to set it alight, when they were spotted and fled the scene.

[3] As far as accused no 1 is concerned, this court is obliged to impose what is commonly referred to as the prescribed minimum sentence for count 1, unless satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence, in terms of s 51(1) read with Part 1 of Schedule 2 and s 51(3)(a) of the Criminal Law Amendment Act ('CLA').¹ This count attracts a prescribed minimum sentence of life imprisonment. In respect of count 2 of which both accused no 1 and accused no 2 have been convicted, there is no prescribed minimum sentence and this court's common law sentencing discretion applies.

[4] Accused no 1 did not testify in mitigation or call any witnesses, but *Mr Williams* addressed the court *ex parte* on his behalf. Accused no 1 is currently 39 years old and having been born on 1 October 1985, committed the current offences when he was 32 years of age. He is unmarried but is the father of an 11 year old son with special needs who even at the time of the offences did not reside with him. Ms Merwida Prince, formerly accused no 3 who was acquitted on both counts, is the child's mother, and based on her evidence during the trial she is actively involved in his care and upbringing, even though he resides in a special needs facility in Grabouw. There is no indication that accused no 1 ever contributed to his child's financial or other support. Further, from what could be gleaned from the evidence at

¹ No. 105 of 1997.

trial, accused no 1's mother also vacated her own home to enable him to live there, and there is no indication that he had a deprived or difficult childhood.

[5] *Mr Williams* in his address also informed the court that accused no 1 completed his schooling in Grade 12. He applied for several jobs after he matriculated and then completed a course in security and obtained his driver's licence. In around 2006 he was employed by G4S Security for about 1½ years. It was not disclosed how that employment came to an end, but what is known is that from March 2007 onwards he entered a life of crime. On 20 April 2007 (at the age of 23 years), he was convicted of housebreaking with intent to steal and theft, and sentenced to 24 months correctional supervision plus six months imprisonment suspended for four years. On 23 December 2008, he was convicted of possession of drugs after having paid an admission of guilt fine of R300.

[6] On 25 February 2011, he was convicted of one count of robbery and one count of assault with intent to cause grievous bodily harm. These counts were taken as one for purposes of sentence and he was sentenced to four years imprisonment wholly suspended for five years, and declared unfit to possess a firearm. On 22 August 2011, he was convicted of theft and received a fine of R1500 or three months imprisonment wholly suspended for three years. On 25 October 2011, he was convicted of theft, and sentenced to committal in a rehabilitation centre plus two years imprisonment wholly suspended for five years on certain conditions. On 1 December 2012, he was convicted of theft and sentenced to 6 months imprisonment in terms of s 276(1)(i) of the Criminal Procedure Act ². On 11 November 2014, he was convicted of trespassing, and sentenced to 12 months direct imprisonment. On 24 February 2015, he was convicted of theft and sentenced to 30 months direct imprisonment. According to accused no 1, he was released on parole on 30 August 2017, only nine months before the current offences were committed.

[7] Having regard to his nine previous convictions over a period of eight years, and the sentences that were imposed, it is fair to say that accused no 1 was given every opportunity to turn his life around and get past his drug addiction. He did not

² No 51 of 1977

take a single one of those opportunities, but instead escalated to also dealing in drugs and participating in the brutal and callous murder of the deceased and the unsuccessful attempt to conceal her body thereafter. One cannot imagine the emotional pain to which he has subjected his mother for years as a result of his own choices, something of which he seems to be completely oblivious. One would also have thought that, since he is the father of a special needs child, he would have had an added incentive to become a responsible parent and functioning member of society. Again, this does not appear to concern him in the slightest.

[8] The statistics released by the South African Police Service in respect of femicide and other gender based violence for the period January to March 2025 alone – and these are only the cases that are reported to it – reflect the murders of 969 women, over 11 000 rapes, and nearly 15 000 assaults.³ In *S v Robertson*⁴ the court, dealing with femicide, stated as follows:

‘[33] Perhaps the most appropriate expression of femicide, as gleaned from the authors⁵, can be summarised as follows. Femicide is the manifestation of a man’s need to communicate his superiority and dominance over women and such acts are typically rooted in sexism, sadistic pleasure, superiority, a sense of ownership and a flagrant disrespect for women as a group...’

[9] For all the reasons contained in my judgment on conviction on this score - and which are not necessary to repeat - I agree with the submission of *Mr Uys* that accused no 1 is the proverbial ‘poster boy’ fitting the description in *Robertson*. Much is said in this country about our constitutional rights, and correctly so, but not enough seems to be said about our concomitant individual and collective responsibility to move towards a society that is in harmony with the very purpose that our hard fought for Constitution is designed to achieve. In saying this I fully acknowledge poverty, deprivation and other social evils, many of which are attributable to the ravages of the apartheid system. However, hundreds of thousands of people who suffered at its hands have nonetheless been able to overcome these very serious obstacles.

³ As reported in *The Citizen* on 29 June 2025

⁴ 2023 (2) SACR 156 (WCC)

⁵ Referred to at paras 32-33 thereof

[10] Very little was placed before the court about the deceased, not for lack of trying to find information on the part of *Mr Uys*. All this court knows is that she was 28 years old at the time of her murder and that she had a child. That does not mean that she was worthless and deserving of the treatment meted out to her by accused no 1 and his accomplice DK. I believe it fair to say that, on the proven facts, accused no 1 and DK snuffed out her life without a second thought, although accused no 1 played a lesser role than DK in her murder. The deceased must have suffered a terrifying death and her body was treated as garbage.

[11] As stated in my judgment on conviction, I was able to observe both accused over the 14 day period during which evidence was adduced in this trial. I do not intend to repeat my findings on accused no 1's demeanour, but it is necessary to add the following. Not once throughout that entire period, and indeed even during argument and address on sentence, did I detect a glimmer of compassion in accused no 1 for the deceased, nor any insight into her suffering. Accused no 1 appears to be completely lacking in remorse. He also appears to believe himself entitled to do as he pleases irrespective of the rights of, and consequences to, others.

[12] However, I must also take into account the following factors as submitted by *Mr Williams*. Irrespective of the life choices made by accused no 1, the fact of the matter is that the murder of the deceased occurred when accused no 1 was highly intoxicated on drugs. He has been incarcerated as an awaiting trial prisoner for just over 7 years, and it is common knowledge that conditions of such prisoners are unhealthy and overcrowded, to put it mildly. I do not have sufficient information before me as to the reason(s) for this extraordinarily long period other than what I alluded to in my judgment on conviction (namely the choice seemingly made by the National Prosecuting Authority to transfer this case to the High Court with the attendant lengthy delays instead of finalising it in the Regional Court) and that the Covid-19 pandemic intervened in March 2020. The failed s 105A⁶ proceedings only resulted in a relatively minor delay shortly before the trial eventually commenced

⁶ In terms of the Criminal Procedure Act

before me. I must also take into account my finding that his active association in the murder of the deceased was not premeditated.

[13] Deterrence is extremely important in our increasingly violent society. Although due weight must be given to the personal circumstances of accused no 1, due weight must also be given to the gravity of the offences, the prevalence and wide-spread occurrence of violent crime (including femicide) in this country, and the demands and expectations of right minded and law-abiding members of society who live by our constitutional values and who look to the courts for protection.

[14] This is appropriate, as appears from the view expressed by Harms JA in *S v Mhlakaza and Another*⁷ that:

‘Given the current levels of violence and serious crimes in this country, it seems proper that, in sentencing especially such crimes, the emphasis should be on retribution and deterrence.’

[15] This was quoted with approval by Nugent JA in *S v Swart*⁸ where he commented as follows:

‘Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role...

I have pointed out that in the case of serious crimes society’s sense of outrage and the deterrence of the offender and other potential offenders deserve considerable weight...’

[16] When deciding the question whether “substantial and compelling circumstances” are present, *S v Malgas*⁹ remains the leading authority. The following principles may be distilled from that judgment.¹⁰ First, the specified prescribed minimum sentences are not to be departed from lightly and for flimsy reasons, and

⁷ 1997 (1) SACR 515 (SCA) at 519d.

⁸ 2004 (2) SACR 370 (SCA) at paras [12] and [14].

⁹ 2001 (1) SACR 469 (SCA).

¹⁰ Esp. at paras [22] to [25].

speculative hypotheses favourable to the offender, undue sympathy and the like are to be excluded. Second, although the legislature ordained that such sentences are to be regarded as ‘ordinarily appropriate’ in the absence of weighty justification to the contrary when crimes of the kind specified are committed, an individualised response to sentencing a particular offender has not been dispensed with by the CLA. Accordingly, if a court is satisfied for objectively convincing reasons that the circumstances of a particular case render the prescribed minimum sentence unjust, that is, disproportionate to the crime, the offender and the legitimate needs of society, it is entitled to characterise them as substantial and compelling.

[17] In *S v Dodo*¹¹ the Constitutional Court approved the approach set out in *Malgas* as ‘undoubtedly correct’. It confirmed that s 51(1) of the CLA does not require a court to impose a sentence of life imprisonment when it would be inconsistent with an offender’s right guaranteed by s 12(1)(e) of the Constitution, that is, not to be treated or punished in a cruel, inhuman or degrading way. It went on to say:

‘The test in *Malgas* must be employed in order to determine when section 51(3) can legitimately be invoked by a sentencing court to pass a lesser sentence than that prescribed by section 51(1) or (2). The test of gross disproportionality, on the other hand, must be applied in order to determine whether a sentence mandated by law is inconsistent with the offender’s section 12(1)(e) right...’

[18] What must also be factored in is what was held in *S v Vilakazi*¹², namely that:

‘...In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. 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

¹¹ 2001 (1) SACR 594 (CC) at para [40].

¹² 2009 (1) SACR 552 (SCA) at para [58].

the kind of “flimsy” grounds that Malgas said should be avoided. But they are nonetheless relevant in another respect. A material consideration is whether the accused can be expected to offend again...”

[19] It is also appropriate to refer to the wise injunction of the Supreme Court of Appeal in a decision handed down almost 15 years ago on 30 September 2010 in *S v Matyityi*:¹³

‘Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation continues to be alarming. It follows that, to borrow from *Malgas*, it still is “no longer business as usual”. And yet one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest of reasons – reasons, as here, that do not survive scrutiny. As *Malgas* makes plain courts have a duty, despite any personal doubts about the 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 power of the other arms of state. Here Parliament has spoken. It has ordained minimum sentences for certain 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 to fit the particular sentencing officer’s personal notion 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.’

[20] Turning now to accused no 2. He also did not testify in mitigation or call any witnesses, but *Mr Brand* addressed the court *ex parte* on his behalf. He is currently

¹³ 2011 (1) SACR 40 (SCA) at para [23].

32 years old, and since he was born on 2 November 1992, at the time of commission of the offence for which he has been convicted he was 25 years old. He is not married but is the father of 2 young sons, who live with their maternal grandparents. His highest level of education is an NCV Level 3. At the time of the offence he was gainfully employed at a motor dealership as a mechanic technician while undergoing an apprenticeship. He also did part time repair work to vehicles for private customers to earn extra income. He voluntarily contributed toward the financial support of his children. As mentioned in my judgment on conviction, a few months prior to the incident he sustained a head injury in an assault which went largely untreated, and which also affected his memory recall. He contracted TB while incarcerated and is still not receiving proper medical attention, despite the earlier efforts of this court, as well as *Mr Brand* and *Mr Uys*.

[21] Accused no 2 has no previous convictions. A few days after the incident he made a confession as to his involvement in count 2. He has also been incarcerated as an awaiting trial prisoner for just over 7 years. The same applies to him as to the reasons for this lengthy period of pre-trial incarceration. I found in my judgment on conviction that he was intimidated and influenced to a degree by accused no 1. He too was heavily intoxicated on drugs at the time of the deceased's murder, but the evidence established that this notwithstanding, he tried in vain to protect her from DK, Ms Carelse and accused no 1. All of these factors taken cumulatively are mitigating, and there is no indication that he has a propensity for violence or that there is a high risk of him attempting to defeat the administration of justice again.

[22] Regarding the awaiting trial period of incarceration of accused no 1, unlike in *Ludidi and Others v S*¹⁴ where the High Court had found that the period the accused had spent in custody awaiting trial (for 5 years and 8 months) was largely as a result of their own making as well as that of their legal representatives, which caused the Supreme Court of Appeal to reject it as a substantial and compelling circumstance in terms of the proportionality enquiry, there is no such evidence in the matter before me. Further, although an appropriate sentence on count 2 for both accused does not involve an enquiry into the existence of substantial and compelling

¹⁴ 2025 (1) SACR 225 (SCA)

circumstances, the inordinately long period of awaiting trial incarceration must be taken into account in the exercise of this court's common law discretion.

[23] I have had regard to various decisions of our courts in relation to sentences imposed for convictions on count 2 (ie. attempting to defeat or obstruct the administration of justice). All are of course fact specific, but I refer to them for purposes of guidance as to what would be an appropriate sentence on count 2 for both accused no 1 and accused no 2. In some of them, given the sentences imposed on other counts, the relevant sentences were ordered to run concurrently. I will not deal with that part for purposes of the exercise. In *S v Mene*¹⁵ the two appellants in question, both police officers, had intentionally damaged a vehicle used in the commission of a crime and then made a false report. On appeal the court imposed on each of them a sentence of three years imprisonment of which two years were suspended for five years on condition that they were not again found guilty of such an offence. In *Botha v S*¹⁶, although not clear from the judgment as to what the circumstances were other than that the counts in general related to child exploitation, the appellant was sentenced to 12 months imprisonment wholly suspended for five years on the same condition as in *Mene*.

[24] In *S v Smeddle and Another*¹⁷ where the accused had approached a state witness to attempt to persuade him not to identify them on the same day they were released on bail, this court imposed a sentence of two years imprisonment on each accused. In *Oosthuizen and Another v The State*¹⁸ where one of the appellants had set alight a coffin used in a brutal assault on the victim, he was sentenced to 12 months imprisonment. In *S v Mshubi and Another*¹⁹ where the accused hid the deceased's body by burying it, they were each sentenced to 6 years imprisonment. In *S v A L*²⁰ where the accused had tried to prevent someone from taking his baby, whom he had raped, to hospital in order to avoid detection, he was sentenced to 2 years imprisonment. In *S v Kgwed*²¹ the accused was convicted on 2 counts of

¹⁵ 1988

¹⁶ [2015] ZAFSHC 34 (26 February 2015)

¹⁷ Unreported decision in this Division, case no CC 38/2015 dated 15 August 2016

¹⁸ [2019] ZASCA 182 (2 December 2019)

¹⁹ [2022] ZAGPJHC 83 (8 February 2022)

²⁰ [2024] ZAGPPHC 867 (10 May 2024)

²¹ [2024] ZAGPJHC 511 (14 May 2024)

defeating the ends of justice. On the first count, he had assisted in transporting the body of one of the deceased to another part of town after it was wrapped in a blanket and placed in a trolley bin. On the second count, in respect of another deceased, the accused followed instructions to bury the body in a hole and cover it with furniture. The accused reported this last incident to the police a few days later. The counts were taken as one for purposes of sentence, and he received imprisonment of 10 years, of which three years was suspended for five years on the usual conditions. Lastly, in *Bvuma v S*²² the appeal court confirmed a sentence of 12 months imprisonment where the appellant had told a witness that if the police approached him, he was to deny any knowledge of the crime.

[25] Having carefully considered the applicable legal principles and the personal circumstances of accused no 1, as well as all the mitigating and aggravating circumstances in respect of the murder count, I have come to the conclusion that to impose a sentence of life imprisonment would be inconsistent with his right guaranteed by s 12(1)(e) of the Constitution, and would thus offend against the principle of proportionality. This allows me to categorise the period he has spent in custody awaiting trial, and the fact that he was highly intoxicated on drugs when committing this offence, as substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence. That being said, there is no doubt in my mind that he must nonetheless serve a lengthy period of imprisonment.

[26] As far as the count of attempting to defeat or obstruct the administration of justice is concerned, in the exercise of my discretion I have concluded that what is set out hereafter in respect of each accused is appropriate.

[27] **Accused no 1 is sentenced as follows:**

1. **Count 1 – Murder with common purpose: TWENTY FOUR (24) years imprisonment.**
2. **Count 2 - Attempting to defeat or obstruct the administration of justice: THREE (3) years imprisonment.**

²² [2025] ZALMPPHC 121 [20 June 2025]

3. It is further ordered that the sentences imposed on counts 1 and 2 shall run concurrently in terms of section 280(2) of the Criminal Procedure Act 51 of 1977.

Accused no 2 is sentenced as follows:

1. **Count 2** - Attempting to defeat or obstruct the administration of justice: THREE (3) years imprisonment, wholly suspended for FIVE (5) years on condition that the accused is not convicted of the offence of defeating or obstructing the administration of justice, or any attempt to do so, committed during the period of suspension.
2. It is accordingly ordered that accused no 2 must be released from custody immediately, subject to any internal discharge procedure that may be required by the prison authorities to be completed, but which is to occur by no later than 17h00 today, 21 August 2025.

J I CLOETE

Judge of the High Court

Appearances:

For The State: Adv Kepler Uys

For Accused No 1 Adv Mark Williams

For Accused No 2 Mr Burger Brand (Legal Aid South Africa)