

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

CASE NUMBER: KS 29/2006

In the matter between:

TEBOGO WILLIAM MATTHEWIS

APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *Matthewis v The State* (29/2006) [2025] 15 August 2025.

Coram: Stanton J

Decided on the papers:

Delivered: 15 August 2025

Summary: Application for condonation for the filing of an application for leave to appeal against the sentence of life imprisonment - inordinate delay - no reasonable explanation for the delay – applicant failed to demonstrate any misdirection in respect of the sentence - no reasonable prospects of success on appeal – no compelling reason to hear appeal - condonation application refused.

ORDER

1. The application for condonation for the filing of an application for leave to appeal against the sentence of life imprisonment is refused.
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JUDGMENT

Stanton J

Introduction:

- [1] This is an application for condonation for the filing of an application for leave to appeal against the sentence of life imprisonment imposed by the trial court. The State opposes the application. The trial served before Lacock J who retired on 31 July 2015, more than ten years ago.
- [2] The applicant, Mr Tebogo William Mathewis, was charged for the offence of housebreaking with the intent to commit rape, and rape, read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the CLAA") and an offence of kidnapping. The charge of kidnapping was withdrawn at the commencement of the trial. He was legally represented in the trial court. He pleaded guilty to the charge of rape and a written statement in terms of s 112 of the Criminal Procedure Act 51 of 1977 ("the Act") was accepted by the State. On 22 August 2006 he was convicted on the count of rape and on 24 August 2006 he was sentenced to life imprisonment in terms of s 51(1) of the CLAA.
- [3] The application is before me approximately 18 years after the sentence was imposed. This judgment is given without the benefit of the record. Despite all

attempts by Mr Steynberg, the applicant's legal representative after 2017 when he was appointed to act for the applicant on behalf of Legal Aid SA, the Registrar and the secretary who subsequently worked with the retired judge years after the matter had been finalised, the judgments on the conviction and the reasons for sentence could not be traced.

- [4] Counsel for the applicant and the State agreed that this matter can be adjudicated on the papers and without hearing oral argument, pursuant to the provisions of s 19(a) of the Superior Courts Act 10 of 2013 ("the Superior Courts Act"). I agree.

Ad condonation:

- [5] The preliminary, and potentially dispositive, matter before this Court is the condonation application.

- [6] According to the applicant's affidavit, dated 05 September 2024, filed in support of his condonation application, he acknowledged that he failed to file the application within the prescribed 14 days.

- [7] He explained that the delay arose as:

7.1 He is a layperson with no knowledge of the legal system;

7.2 After he was sentenced, he wanted to appoint private counsel to assist him in his appeal, but he was financially dependent on his family who unable to procure the necessary funds;

7.3 With the assistance of his fellow inmates, the application was drafted; and with the assistance of the prison authorities, it was filed on 02 December 2009 at the appeal clerk in Upington, three years and three months after the imposition of the sentence;

- 7.4 On 02 December 2009, the appeal clerk informed him that the application should be directed to the Northern Cape Provincial Division, Kimberley;
- 7.5 The Registrar of this Division received the application on 22 December 2009;
- 7.6 He did not receive any feedback regarding the matter, and neither was he requisitioned to argue the application;
- 7.7 On 17 October 2017, he applied for legal aid, and on 7 November 2017, Mr Steynberg addressed a letter to the Registrar, requesting a copy of the judgement on conviction and sentence as he did not attend to the trial;
- 7.8 The judgments were not forthcoming and Mr Steynberg, to prevent a further delay in the finalisation of the application, decided to proceed with the matter on the notes of the Lacock J's bench book, which he received on 23 July 2024. From the date on which the transcribed judgments were requested until the bench book notes were received, Mr Steynberg met with the chief registrar monthly; and
- 7.9 His legal representative is employed in Kimberley while he is incarcerated in Upington.

Legal principles – condonation:

- [8] A consistent refrain in the relevant jurisprudence, including several judgments of the Supreme Court of Appeal and the Constitutional Court, is that condonation entails the grant of an indulgence and is not to be had just for the asking.¹

¹ See e.g. *Kham And Others v Electoral Commission And Another* [2015] ZACC 37; 2016 (2) BCLR 157 (CC); 2016 (2) SA 338 (CC) para 28, *Von Abo v President of the Republic of South Africa* [2009] ZACC 15; 2009 (10) BCLR 1052 (CC); 2009 (5) SA 345 (CC) para 20, *eThekweni Municipality v*

- [9] The general approach to determining whether the interests of justice would be served by condoning non-compliance with procedural and practice requirements is well established. For example, in *Van Wyk v Unitas Hospital and Another*² it was stated that factors relevant to the enquiry include, but are not limited to, the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success. Each case must be treated on its peculiar facts, and the weight to be given to the pertinent factors will vary case by case, but when the delay has been inordinate the public interest in the finality of judicial decisions.

Evaluation:

- [10] Even if no blame can be attached to the applicant in respect of the period after 2017 when Mr Steynberg attempted to obtain the record and the judgments, this application is before me some 18 years after the sentence was imposed, which delay is extraordinarily long.
- [11] I find the applicant's explanation for the delay in respect of the period from 24 August 2006 until 02 December 2009 extremely unsatisfactory for the following reasons:
- 11.1 On the applicant's version, he knew that he had a right to appeal, but he failed to exercise that right;
- 11.2 He claims that he wanted to appoint private counsel to assist him whilst he was represented by Legal Aid SA during the trial. To my mind, the

Ingonyama Trust [2013] ZACC 7; 2013 (5) BCLR 497 (CC); 2014 (3) SA 240 (CC) paras 25-27; *Mulaudzi v Old Mutual Life Insurance Company (South Africa) Limited and Others, National Director of Public Prosecutions and Another v Mulaudzi* [2017] ZASCA 88; [2017] 3 All SA 520 (SCA); 2017 (6) SA 90 (SCA) paras 25-26; and *Uitenhage Transitional Local Council v South African Revenue Service* [2003] ZASCA 76; [2003] 4 All SA 37 (SCA) para 6.

² [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) para 20.

applicant knew that he could not afford to appoint private counsel and that he should have timeously approached Legal Aid SA;

- 11.3 The applicant provides no particulars of the family members whom he approached for financial assistance, and no confirmatory affidavit by any family member is provided to corroborate his version; and
- 11.4 The applicant fails to explain why he did not obtain legal representation from Legal Aid SA to assist him with the appeal process when he realised that his family were unable to assist him financially, but that he merely relied on the help of his inmates.
- [12] This delay of three years and three months is excessive and the explanation for the delay is inadequate.
- [13] In respect of the period from 02 December 2009 until Mr Steynberg was appointed in 2017 to assist him, the applicant fails to provide any information of attempts made by him to follow up on his application. This information would have assisted this Court in reaching an informed decision. The applicant provides no explanation why he only enlisted the service of Legal Aid SA during 2017, more than eight years after he submitted this application to the Registrar of this Division. He does not take the Court into his confidence, but merely states that he is a layman and expected to be requisitioned.
- [14] I can reach no other conclusion that the applicant was not serious about pursuing his appeal. His failure furthermore resulted in the impossibility of obtaining the records of the trial. According to a sworn affidavit by Ms N Swart, an administration officer, in the employment of the Department of Justice and Constitutional Development, the recording system changed in 2017 from DCRS to CRT and the files could not be retrieved from the system. If he had acted with some haste, this could have been prevented. Furthermore, Lacock J retired some nine years after the sentence was imposed.

- [15] This is, taking into consideration the extent and cause of the delay; the effect of the delay on the administration of justice; and the reasonableness of the explanation for the delay, the type of case in which condonation should be refused irrespective of the prospects of success. I nevertheless believe it to be prudent nonetheless to deal briefly with the prospects of success.

Prospects of success in the appeal:

- [16] Mr Steynberg confirmed that the application can be adjudicated without the complete record since the applicant's written guilty plea, setting out the factual basis for the plea, and the bench notes of Lacock J, which record the personal circumstances of the applicant, are available.

- [17] A summary of the plea would suffice for present purposes. In his plea, the applicant admitted that:

17.1 On 12 March 2005 at Klippunt, Kanoneiland in the district of Gordonia West he had raped CJB, a 22-month-old girl ("the child");

17.2 She could not give consent due to her age;

17.3 His actions were unlawful, but he committed the offence with intent. He could not explain why he committed the offence;

17.4 He entered the house of the child's parents and found the parents and the child asleep. He took her outside, took off her nappy and raped her; and

17.5 He indicated that he is sad about what he had done and has intense remorse. He begged the child, her family, the court and the community for their forgiveness.

- [18] From the typed bench book notes, Prof Cooreman, a specialist gynaecologist and obstetrician at the University of the Free State, testified that he perused the

hospital records of the child. According to the hospital records, the child was first admitted to Upington Hospital, whereafter she was transferred to Kimberley Hospital and finally to Universitas Hospital in Bloemfontein for surgery and treatment on 15 March 2005. She was examined under anaesthesia, cleaned and prepped for surgery. He noted that the internal and external injuries were extensive. Her whole anus and vagina were torn. Her internal injuries included: (a) a tear through the whole of her anus, which tear was along the whole of her vagina up to underneath her uterus wall; (b) her left kidney pipe broke loose from the pelvic floor; (c) the injuries extended up to just next to her aorta, directly across from the spinal column; (d) the deepest wound measured between 15 and 16 cm long. She was operated again on 17 March 2005 and was admitted approximately on six further occasions over a period of three months for further examination and nursing.

- [19] In respect of her prognosis and recovery, he opined that her anus could not be restored 100% to its original form and he cannot predict whether it will heal a 100%. She is, however, continent and has bowel movement control, but the possibility of future problems cannot be eliminated. She will have permanent scarring to her vagina, but it can only be determined after sexual maturity whether she will experience vaginal dysfunction. There may be problems in penetration, and this will require follow up surgery. The membrane that separates the aorta from the intestines is intact, but very thin. It can only be determined in the future whether her ability to have children has been negatively affected. The injuries to her kidney pipe might present future incapacities and inabilities. Her pain could be placed at a level of 100 out of 10. There were attempts to support her psychologically, but the memories would be everlasting. Future examinations are recommended and treatment in the private sector would in all probability amount to R500,000. When cross-examined, prof Cooreman testified that the child has physically healed.
- [20] The child's father also testified. He testified that she is his only child. And that he knew the applicant for about 4 to 5 years as they worked together, and he visited them regularly. The applicant was a friend of the family and his interaction with the child was good; he used to pick her up and play with her.

On 12 March 2005, the applicant visited them at their house where they had a drink and then they went to sleep. The next morning the child was missing. They searched for her and found her standing in between a pile of stones. She couldn't talk, she just looked at them and she was covered in blood. He called his wife and said that it appears that the child had been raped. They took the child to the police. She felt terrible and was in pain. Currently, she is doing well, but what happened to her still had to be relayed to her. She sometimes complains that it burns when she urinates.

The ground of appeal:-

- [21] The appeal lies against the sentence of life imprisonment imposed. It was contended, in broad terms, that the court *a quo* misdirected itself in not finding substantial and compelling circumstances that justified a departure from the prescribed minimum sentence of life imprisonment.

Evaluation:

- [22] Mrs. Victor, on behalf of the applicant, advanced the following personal circumstances in mitigation of his sentence: (a) he was 21 year's old when he committed the offence and he was 22 year's old when he sentenced; (b) he has no formal schooling; (c) he is one of seven children, three brothers, one of whom had passed away, and three sisters; (d) both his parents worked as farm labourers; (e) he grew up poor, but had a happy childhood; (f) he worked as a seasonal farm labourer and earned R300 every two weeks. He also worked at Alfred for six months for a salary of R200 per week. He earned an extra income by selling alcohol and dagga; (g) he supported his two sisters, who are or dependent on him, by sending them approximately R2 000 every three months; (h) he has a child of two years who is looked after by his parents; and (i) he has no pending criminal cases or previous convictions.
- [23] The retyped bench notes reflect that Ms Victor argued that substantial and compelling circumstances exist in that the applicant is: (a) relatively young; (b) a first offender; (c) he pleaded guilty and gave his cooperation to the State; (d)

he showed remorse; (e) he worked and was a useful citizen who provided money to his dependants; and (f) he was under the influence of alcohol and drugs when he committed the murder.

- [24] Mrs Birch, on behalf of the State, contended that the applicant's actions were calculated and, with reference to *S v Chapman*,³ that no substantial and compelling circumstances exist that would justify the imposition of a sentence less than the minimum sentence.
- [25] Mr Steynberg, on behalf of the applicant, relying on *S v Malgas ("Malgas")*,⁴ submitted that there is a reasonable prospects of success on appeal, and that another court would come to another conclusion regarding the presence of substantial and compelling circumstances, whilst having regard to the triad of factors, to wit, the crime, the applicant and the needs of society. He conceded that the crime was very serious as a defenceless child was raped and violated to such an extent that the child had to receive surgical intervention. According to his argument, no mitigating circumstances emanates from the defence, save that the applicant consumed alcohol, dagga and mandrax, but is unclear how the substances affected the applicant during the commission of the offence. He, however, submitted that the sentence is disproportionate if the applicant's personal circumstances is taken into consideration.

Applicable law:

- [26] In *Malgas*,⁵ Marais JA, regarding the approach to be followed when minimum sentences are imposed, stated as follows:-

'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

³ 1997 (3) SA 341 (SCA); [1997] 3 All SA 277 (A).

⁴ 2001 (1) SACR 469 (SCA) at paras 13 and 14.

⁵ [2001] ZASCA 30 AT PARA [8], [9] AND [12].

considering sentences, 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. But that did not mean that all other considerations were to be ignored. The residual discretion to decline to pass the sentence which the commission of such an offence would ordinarily attract plainly was given to the courts in recognition of the easily foreseeable injustices which could result from obliging them to pass the specified sentences come what may.... Moreover, those circumstances had to be substantial and compelling. Whatever nuances of meaning may lurk in those words, their central thrust seems obvious. 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. ... What they are apt to convey, is that the ultimate cumulative impact of those circumstances must be such as to justify a departure. It is axiomatic in the normal process of sentencing that, while each of a number of mitigating factors when viewed in isolation may have little persuasive force, their combined impact may be considerable.⁶

- [27] In addition, *Malgas* confirmed that *"Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances."*
- [28] It is trite that punishment must fit the criminal, as well as the crime, be fair to society and be blended with a measure of mercy. When sentencing an accused, a court is required to consider the four objectives of punishment (deterrence, prevention, rehabilitation and retribution) in view of the triad of factors as set out in *S v Zinn*.⁶ These factors are: (a) the personal circumstances of the offender, including his character, conduct in life and personality, and everything that influenced the commission of the offence; (b) the nature and seriousness of the

⁶ 1969 (2) SA 537 (A).

offence committed; and (c) the interests of the community, including the necessity for a level of uniformity in sentencing.

[29] In *S v RO & Another*,⁷ Heher JA stated:

‘Sentencing is about achieving the right balance (or, in more high-flown terms, proportionality.) The elements at play are the crime, the offender and the interests of society or, with different nuance, prevention, retribution, reformation and deterrence. Invariably there are overlaps that render the process unscientific; even a proper exercise of the judicial function allows reasonable people to arrive at different conclusions.’

[30] In *S v Matyityi*,⁸ Ponnann JA, regarding an accused's age and true remorse, held that:

‘...a person of 20 years or more must show by acceptable evidence that he was immature to such an extent that his immaturity can operate as a mitigating factor’;

and

‘Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question. It is to the surrounding actions of the accused rather than what he says in court that one should rather look.¹¹ In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions. There is no indication that any of this, all of which was peculiarly within the respondent's knowledge, was explored in this case.’

⁷ 2010 (2) SACR 248 (SCA) at para 30.

⁸ 2011 (1) SACR 40 (SCA) at para 24.

[31] Ponnon JA⁹ concluded that:-

'...Instead, the trial court emphasised the personal interests of the individual respondent above all else. In doing so it failed to strike the appropriate balance. It thus imposed a sentence that was disproportionate to the crime and the interests of society. In my view there were no substantial and compelling circumstances present that warranted a departure from the prescribed statutory norm. It follows that the contrary conclusion reached by the high court cannot stand. Having regard to all of the circumstances encountered here the minimum sentence is a manifestly fair and just one. To my mind this is precisely the type of matter that the legislature had in mind when it enacted the minimum sentencing legislation.'

Conclusion:

[32] In the application for leave to appeal, it is incumbent on the applicant to show that the trial court misdirected itself in imposing the sentence. The applicant has failed to show such misdirection. This is not surprising as the facts of the case, based on the written plea, and the bench notes of the evidence and legal arguments, show that the sentence of life imprisonment is not disproportionate to the crime and does not cause any injustice to the applicant. There is nothing on the record that suggests that there are substantial and compelling circumstances to justify a departure from the prescribed minimum sentence. There are accordingly no reasonable prospects of a successful appeal. There is also no compelling reason why the appeal should be heard.

Order:

In the result the following order is made:

1. The application for condonation for the filing of an application for leave to appeal against the sentence of life imprisonment is refused.

⁹ 2001 (1) SACR 469 (SCA) at para 24.

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STANTON, A

On behalf of the applicant:

Adv H Steynberg

On instructions of:

Legal-Aid SA

On behalf of the State:

Adv JJ Rosenberg

On instructions of:

The NDPP