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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A140/2024

In the matter between:

PULE FRANCIS SEITSHIRO

APPELLANT

And

THE STATE

RESPONDENT

Neutral citation: *Setshiro v The State* (A140/2024) [2025] ZAFSHC 253 (18 August 2025)

Coram: Mhlambi J *et* Ntshulana AJ

Heard: 18 August 2025

Delivered: 18 August 2025

Summary: Criminal procedure – appeal of sentence – no substantial and compelling circumstances justifying deviation from minimum sentence present.

ORDER

The appeal against sentence is dismissed.

JUDGMENT

Ntshulana AJ

Introduction

[1] This appeal comes before us in terms of the proviso to s 309(1)(a) of the Criminal Procedure Act 51 of 1977 (the CPA), the appellant having been sentenced to undergo imprisonment for life by a regional magistrate at Bothaville on 31 July 2024, following his conviction on a charge of rape, read with the provisions of s 3 of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and further read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the Act).

[2] The appellant, who was represented by an attorney, tendered a plea of guilty to the charge of having unlawfully and intentionally penetrated the vagina of the 14-year-old P[...] D[...] more than once with his penis. This was after the court *a quo* had explained, in detail, the provisions of the minimum sentence legislation applicable to a conviction for rape of a girl under the age of 16 years and where the victim had been penetrated more than once. There can be no doubt that the appellant knew exactly which sentence he would be facing if found guilty and if no substantial and compelling circumstances upon which the court *a quo* could deviate from the discretionary prescribed minimum sentence, could be found.

[3] The record of proceedings shows that, when tendering his verbal plea, the appellant spontaneously said that the sex between him and the victim had been 'consensual'. It appears that there might have been some misunderstanding between the appellant and his legal representative as a result of which the regional magistrate ordered that the matter was to stand down so that the appellant and his attorney could engage in further consultation.

[4] On resumption, the appellant was not asked again as to how he was pleading or whether he wished to change his earlier plea to one of not guilty (consensual). The regional magistrate merely asked the appellant's legal representative as to what his

present 'instructions' from the appellant were. In response, the appellant's attorney, Ms Qhekoana, said that:

'The instructions are that of a guilty plea, your Worship. I have drafted the plea, we are ready to proceed with the matter.'

[5] The presiding officer enquired from the appellant whether that was his instruction to his attorney and appellant replied 'Yes, your worship'. Thereupon, Ms Qhekoana read the statement into record as envisaged by se 112 (2) of the CPA. The appellant duly confirmed the correctness of the contents of that statement.

[6] The statement reads:

'I am the accused in this matter by the name of Pule Seitshiro. I am charged with the offence of rape. I am pleading guilty thereto freely and voluntarily without any influence from my attorney or any other person in that on 8 to 9 May 2021 at Kgotsong in the district of Bothaville and within the regional division of Free State I unlawfully and intentionally committed an act of sexual penetration with the complainant, to wit P[...] D[...], who was aged 14 years, by penetrating her vagina with my penis more than once.

I wish to place the following facts on record. On the said date I was from a tavern. I met with the complainant on the way and it was at night. I then grabbed her by force, took her to my place, undressed her and had intercourse with her without her consent twice. So, she then left in the morning when there was light outside. I admit that my actions were unlawful and therefore punishable by law and that there is no legal justification for same.'

[7] Relying on the statement read out by the appellant's attorney and confirmed by the appellant himself, the regional magistrate found him guilty as charged.

[8] Counsel for the appellant did not argue before us that the conviction was not in order. We have no reason to believe otherwise. I find this not to be fatal or does not vitiate the proceedings. It is so because the court *a quo* confirmed with the accused whether

those were his instructions, whether he confirms the contents of the statement and at all material times he understood that if found guilty he was facing imprisonment for life. Further, even both the prosecutor and defense attorney addressed the court in terms of s 51(1) of the Act which is an indication that all the parties understood and appreciated the proceedings that the s 51(1) was of application. The proceedings were in accordance with justice and the appellant had a fair trial. The appeal was limited to the sentence which the regional magistrate had imposed.

[9] The trial court found that there were no substantial and compelling circumstances that permitted the imposition of a sentence lighter than that of life imprisonment, and sentenced him to imprisonment for life. The appeal is directed at this finding of the trial court.

[10] Punishment is pre-eminently a matter for the discretion of the trial court. That the appeal court can only interfere with the sentence of the trial court if such sentence is vitiated by irregularity, that it induces a sense of shock.¹

[11] The issue is whether or not the trial court had erred in its finding that there were no substantial and compelling circumstances that permitted it to impose a lesser sentence than the prescribed sentence of life imprisonment.

[12] The provisions of s 51(1), read with part 1 of Schedule 2, of the Act states as follows:

‘Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in part 1 of schedule 2 to imprisonment for life.’

In this case, the appellant was convicted of rape of a 14-year-old at the time of the incident and the minimum sentencing legislation accordingly has application.

¹ *R v Rabie* 1975 (4) SA 855 (A) at 857 D-F; *S v Petka* 1998 (3) SA 571 (A) at 574C.

[13] In *Bailey v The State*,² Bosiello JA formulated the approach by a court on appeal against a sentence imposed in terms of the minimum sentencing legislation as follows:

‘What then is the correct approach by a court on appeal against a sentence imposed in terms of the Act? Can the appellate court interfere with such a sentence imposed by the trial court exercising its discretion properly, simple because it is not the sentence which it would have imposed or that it finds it shocking? The approach to an appeal on sentence imposed in terms of the Act should, in my view, be different to an approach to other sentence imposed under the ordinary sentencing regime. This, in my view, is so because the minimum sentences to be imposed are ordained by the Act. They cannot be departed from lightly or for flimsy reasons. It follows therefore that a proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling, or not.’

[14] In other words, as Rogers J held in *GK v S*,³ whether or not there exists substantial and compelling circumstances, is not a discretionary issue but rather a value judgment which judgment a court of appeal is obliged to bring to bear on the facts presented in the court *a quo*.

[15] In *S v Vilakazi*,⁴ Nugent JA said that ‘[i]t is enough for the sentence to be departed from, that it would be unjust to impose it’. To determine whether or not it would be unjust to impose the sentence, the court is entitled to consider factors traditionally taken into account in sentencing and referred to as ‘mitigating factors’.

[16] In *S v Nkomo*,⁵ Lewis JA held as follows:

‘But it is for the court imposing sentence to decide whether the particular circumstances call for the imposition of a lesser sentence. Such circumstances may include those factors traditionally taken into account in sentencing – mitigating factors – that lessen an accused’s moral guilty. These might include the age of an accused or whether or not he or she has previous convictions.

² *Bailey v S* [2012] ZASCA 154; 2013 (2) SACR 533 (SCA) para 20.

³ *GK v S* [2013] ZAWCHC 76; 2013 (2) SACR 505 (WCC).

⁴ *S v Vilakazi* [2008] ZASCA 87; [2008] 4 All SA 396 (SCA); 2009 (1) SACR 552 (SCA); 2012 (6) SA 353 para 20.

⁵ *S v Nkomo* [2006] ZASCA 139; [2007] 3 All SA 596 (SCA); 2007 (2) SACR 198 (SCA) para 3.

Of course these must be weighed together with aggravating factors. But none of these need be exceptional.'

[17] I now turn to the central issue and consider all the circumstances available to the court *a quo* to assess whether the facts which were considered were substantial and compelling or not, or, put differently, whether it was unjust to impose life imprisonment.

[18] The appellant was 46 years of age at the time of sentencing and had four children aged 8, 12, 17 and 18 years respectively. The appellant was doing odd jobs earning about R8000 in a good month. The appellant has a relevant previous conviction for rape and was still under parole supervision at the time of the incident. The appellant pleaded guilty to the charge and it was therefore argued on his behalf that he did not waste the court's time.

[19] The aggravating circumstances were that appellant raped a 14-year-old, more than once, while at the time still under parole supervision, pursuant to the relevant previous conviction of rape. The State submitted that the appellant had pleaded guilty because he was linked through DNA and that it was not a show of remorse. The State tendered into evidence the J88 medical examination form that clearly showed that the complainant had suffered visible injuries on her private parts.

[20] The court *a quo* considered the appellant's personal circumstances, the seriousness of the crime, the prevalence thereof and the interests of the community. The court *a quo* had sufficient facts before it to assess the impact on the victim of the circumstances of the crime. The appellant had taken the victim by force to his place where he had sexual intercourse with her twice. Only in the morning did he allow her to go. He had prolonged the terrible trauma suffered by the victim by holding her captive for hours. The court *a quo* correctly found that the actions of the appellant were most unbecoming of a father of four children, one of which was a girl child.

[21] The rape of a child under the age of 16 is a heinous and abhorrent crime, which is why the lawmaker has placed this type of rape in the category of crimes attracting a life sentence in the absence of substantial and compelling circumstances. The appellant's conduct of raping the victim (a 14-year-old) more than once while on parole supervision showed that he was someone who would not easily be rehabilitated.

[22] In *S v Chapman*,⁶ it was said:

'Rape is a very serious offence, constituting as it does a humiliating degrading and brutal invasion of the privacy, the dignity and the person of the victim". Despite the introduction of the minimum sentence regime, there is no sign that these kinds of incidents are on the decline.'

[23] In *S v Jansen*,⁷ the learned judge aptly put it as follows:

'Rape of a child is an appalling and perverse abuse of male power. It strikes a blow at a very core of our claim to be a civilized society.'

. . .

'The community is entitled to demand that those who perform such perverse acts of terror be adequately punished, and that the punishment reflect the societal censure 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 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 community is entitled to demand of the police that they bring those who subvert these minimum aspirations before the courts and that the courts, in punishing such persons, should ensure that the sentence adequately reflect the censure which society should and does demand, as well as the retribution which it is entitled to extract.'

⁶ *S v Chapman* [1997] ZASCA 45; [1997] 3 All SA 277 (A); 1997 (3) SA 341 (SCA) at 344I-J.

⁷ *S v Jansen* 1999 (2) SACR 368 (C) at 378G-379B.

[24] It is not unfair to say that the complainant, who was but a child, would have trusted the appellant to protect her from harm, yet he took advantage of the vulnerability of her youth.

[25] Having considered and examined all the circumstances of this case we are not persuaded that the sentence imposed by the court *a quo* is unjust.

[26] It follows that we are not persuaded that the court below had erred in its conclusion that substantial and compelling circumstances were absent in this matter. In our view, the prescribed sentence is indeed proportionate to the offence charged.

Order

[27] Consequently, the following order is made:

The appeal against sentence is dismissed.

NTSHULANA AJ

I agree and it is so ordered.

MHLAMBI J

Appearances

For the appellant: S Kruger
Instructed by: Legal Aid South Africa, Bloemfontein.

For the respondent: E Liebenberg
Instructed by: Director Public Prosecutions, Bloemfontein.