



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

SENTENCE

Reportable

Case no: CC19/2024

In the matter between:

THE STATE

and

JACQUEN ROWHAN APPOLLIS

Accused 1

RACQUEL CHANTEL SMITH

Accused 2

STEVENO DUMAIZO DUWAYNE VAN RHYN

Accused 3

Neutral citation:

Coram: N.C. ERASMUS

Delivered: 29 May 2025

Summary:

ORDER

You are sentenced to life imprisonment for the charge of human trafficking. You are hereby sentenced to ten (10) years of imprisonment for the charge of kidnapping. Since I have imposed life imprisonment, there is no necessity for me to decide on the concurrency of the sentences, as they will be served concurrently by operation of law.

I also order for the entry of your names into The National Child Protection Register.

SENTENCE

ERASMUS, J:

- [1] To begin, I believe it is fitting to reiterate the expression of gratitude I conveyed when I delivered the judgement in the main case. Therefore, for the sake of the record, it should be incorporated here.
- [2] Having said that, it also occurred to me the impact this matter had on the community and the necessity for decision makers who can influence the community's access to justice to consider the way forward. I understand that community members must travel to reach a courtroom in Vredenburg, and I see the Minister of Safety for the province present there. There is a genuine necessity, I believe, considering the unfortunate progression of events in this matter.
- [3] Joshlin grew up in a society characterised by the issues outlined by Mr. Petersen, the social worker who provided the pre-sentence reports to the Court.

This environment was plagued by social problems, and it was clear in this case that criminality, particularly in the realm of drug distribution, had significant effects on the community.

- [4] The evidence indicated that Ms Smith, in particular, was in the need of social services throughout for a prolonged period; and I wonder when her grandmother complained in 2016 to the Department of Social Development in the need for a protection order, what access did she have? When Ms Smith, in particular, sought the support of Social Services that is rendered both through the Department of Social Development as well as in the Magistrate's Court. We failed her.
- [5] I began the evaluation on the merits by considering the role of a child within a village and community. As I impose the sentence on the accused today, it is essential for me to act in the interest of the community while safeguarding the rights of individuals, particularly focussing on the rights of children in relation to the charges presented in this case.
- [6] It is important to emphasise that the charges reflect an intention to protect the vulnerable in society and to restore and uphold the human dignity of individuals. I trust that we will approach matters like these with the seriousness they deserve.
- [7] That being acknowledged, I recognise that this represents the most challenging aspect of a criminal case. As a judicial officer, and fundamentally as a human being, I am tasked with making a judgement regarding the liberty and the potential deprivation of that liberty for other individuals.
- [8] I was referred to a number of authorities during argument in this case and was exposed to many more in a lengthy state of judicial service. I do not propose today to refer unnecessarily to legal precedent unless it is absolutely necessary because the judgment is not aimed at the textbooks and the academia and are

understanding of sentence in a criminal court but rather it should be focussed so that the accused persons know what were the considerations for their ultimate fate and that the broader community can understand the meaning of and the purpose of that sentence.

[9] I was constantly referred to the Appellate Division case as it then was in the State v Zinn where the long debate yesterday about how the triad in Zinn and the element of mercy interplay in the determination of an appropriate sentence.

[10] I was frequently directed to the Appellate Division case, formerly known as State v Zinn, where the extensive discussion yesterday revolved around the interaction between the triad in Zinn and the element of mercy in determining a suitable sentence.

[11] I was also referred to the judgement of Corbett JA in State v Rabie 1975. However, what became clear in yesterday's debate is the long-standing history of caution advised by writers over the centuries regarding how judges should approach sentencing. I find it essential to reference the case of State v Rabie, as articulated by Corbett JA at that time, as this will serve as a guiding principle for my examination of the facts and circumstances that I will address shortly.

“A judicial officer should not approach punishment in a spirit of anger because being human that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interest of society which his task and the objects of punishment demand of him. Nor should he strive after severity, nor, on the other hand, surrender to misplaced pity. While not flinching from firmness where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality. It is in the context of this attitude of mind that I see mercy as an element in the determination of the appropriate

punishment in the light of all the circumstances of the particular case. It is the duty of the court to balance all the circumstances applicable and to blend that with a measure of mercy in arriving at an appropriate sentence in the discretion of the trial court.”

[12] I will refrain from reiterating all the facts, circumstances, and factors considered in this sentencing judgement. I have certainly taken it into account. I will consider the facts of the case on their merits, along with all the evidence presented to the court by the witnesses who testified during sentencing, as well as the submissions made from the bar, particularly in relation to Mr Van Rhyn and the additional affidavits submitted yesterday.

[13] Now, I need to turn to address Mr Appolis, Mr Van Rhyn and Ms Smith so that they understand how I arrived at the sentence that I will ultimately impose.

[14] Typically, a judgement is presented in the third person; however, I believe it is fitting for the court to address the accused directly when imposing a sentence. I will consider several factors that require careful balancing. The circumstances of the individual to be sentenced, Mr. Appolis, Mr. Van Rhyn, and Ms. Smith, are presented without any specific order of importance. Additionally, I will address the offence in detail, consider the interests of the community, and emphasise the significance of the sentence's purpose.

Now, let me start with the last part first

[15] The community is calling for retribution. Indeed, it is a fundamental aspect of sentencing, as those who harm society must face consequences for their actions. This is achieved through a system of laws and various forms of punishment. Additionally, it is crucial that sentencing serves the important function of deterring individuals from re-offending, as well as discouraging others who might consider undermining the moral values of society. In certain instances, retribution and

deterrence emerge as significantly more prominent than the other objectives of sentencing.

- [16] I have been presented with the argument that I should prioritise rehabilitation as a key purpose of sentencing. I believe that there are specific types of cases and the circumstances surrounding them where the rehabilitation and potential rehabilitation of an offender are not prioritised. In this instance, we were fortunate to have detailed reports from Mr. Petersen regarding you, Mr. Appollis, Mr. Van Rhyn, and Ms. Smith. I will thus revisit the circumstances presented to the court.
- [17] I take a moment to acknowledge the conditions surrounding the creation of these reports. It is crucial for a court, when determining a sentence and gathering the required information and evidence, to act proactively. As I mentioned at the beginning, it is the court's responsibility to ensure that a fair and just sentence is imposed. I requested the pre-sentence reports for that reason, and I am grateful for the facilitation provided by the department of Social Development in the province.
- [18] Typically, courts are asked to allow a minimum of six weeks for these kinds of reports. I provided them with a significantly shorter timeline, and when it appeared that the delivery would not be on schedule, I applied some pressure, resulting in their timely delivery. I stated in open court the other day that since last Saturday, it has been all hands on deck.
- [19] Despite the baseless criticism directed at Mr. Petersen in this court by the defence counsel, I must express that over the years, this is one of the most thorough reports I have encountered. The diligence and clarity of thought evident in the reports are truly commendable. Mr. Peterson demonstrated himself to be a dependable servant of the people through the way he prepared and presented

these reports to the court. I hope this type of service is accessible to everyone at all times.

[20] Greetings, Mr. Appollis, I acknowledge that you have had two encounters with the law previously; however, I will not focus on those when considering the sentencing in this case. Yesterday, I remarked to Mr. Harmse that I understand from the report that you hail from a good home. You had chances to advance in life, yet you opted for a different route by engaging in substance abuse, which altered the course you might have taken.

[21] You are the father of an 11-year-old daughter, and you have taken on the role of a father figure for Joshlin and Ms. Smith's children. I will revisit that father-level later in this judgement as it pertains to Joshlin. It appears that you have not been gainfully employed for any significant duration and have largely depended on Ms. Smith for your livelihood. I am concerned about the attitude you exhibited, as described by Mr. Petersen, in your personal circumstances. It appears that you have not expressed any remorse or concern regarding the situation with Joshlin. Instead, you continued to distort the truth, even as this sentencing approached. I do not see any mitigating factors in your personal circumstances.

[22] Mr. Petersen characterised Mr. Van Rhyn as a threat to society. Your upbringing was challenging, as your late father was often away from home due to work obligations. The home was impacted by significant alcohol abuse, yet your mother remained the resilient figure who provided care. In a manner akin to Mr. Appollis, it appears that you had the chance to lead a respectable life from the home, yet, in contrast to Mr. Appollis and Ms. Smith, in addition to the drug use and its abuse, you opted for a life of crime.

[23] I disagree with the submissions that you have been rehabilitated. You have had several encounters with the law related to robbery, which are considered violent offences. Robbery is inherently a violent crime. You also engaged in house

breaking. I will not focus heavily on the drug charge, however, you were provided with the chance for correctional supervision and the opportunity to rehabilitate within society. Unfortunately, you squandered this opportunity by failing to comply with your conditions, resulting in an additional 407 days served due to a parole violation. I anticipated that someone who has experienced circumstances similar to yours, with a father murdered at a young age, would understand the repercussions, not just for yourself, but also for the wider community when families are impacted by such events.

[24] Your demeanour in this courtroom reflected a lack of concern, and this attitude extends beyond these proceedings. When Mr. Petersen asked about your feelings regarding Joshlin's disappearance, you explicitly stated that you simply do not care. As a father of a young daughter who is currently four years old, you have demonstrated a complete lack of remorse and concern, as reflected in your own words. In your personal circumstances, I see no mitigating factors.

[25] Ms Smith, according to the undisputed evidence of Mr Petersen, from information gathered through the collateral sources, family members that he interviewed as well as the victim impact statement presented yesterday by your mother, is portrayed as a person that is manipulative and manipulates the facts as it suits you. You went as far as to blame your parents for your conduct in this matter.

[26] The evidence regarding the disappearance of your daughter was unequivocal. Furthermore, on one occasion earlier and yesterday, I observed no signs of remorse; however, this lack of concern did not begin there, as we are aware from 19 February 2024.

[27] Indeed, I must consider that you have two other minor children; however, it is fortunate that they are currently being cared for. The caution I must exercise when imposing a term of imprisonment on another and a carer, as articulated in the case of M in the Constitutional Court, carries diminished significance. Mr.

Petersen has, however, indicated that steps should be taken, and we heard during the main trial that measures have been implemented to ensure the care of the two minor children.

[28] I gather from the evidence of Mr Petersen and the victim impact statement from your mother that you were given all the opportunities. Yes, you were born under difficult circumstances, but you were given the opportunity through your grandparents that cared for you to have a stable life. You, unlike Mr Appollis and Mr Van Rhyn that did not do that well at school you matriculated.

[29] Your mother's victim impact statement clearly conveyed her desire to support you, even in the face of your drug use and abuse. A helping hand was pushed away in a threatening manner. Until now, I have not observed any signs of remorse. In regard to the personal circumstances, I do not see any mitigating factors.

[30] The prosecutor will contend, and has contended, that given the clarity of the law regarding a prescribed sentence and the absence of substantial circumstances, as I have noted, this should conclude the inquiry at face value. The situation is not straightforward, as the final decision still lies with the court, and it is essential to consider more than just a single element. All aspects need to be assessed in a comprehensive manner, and equilibrium must be achieved.

[31] I will begin by referencing the pre-sentences, emphasising that the inquiry must ensure the prescribed sentence is both fair and just. If not, the court would be compelled to impose a lesser sentence. I do not consider the prescribed minimum sentence to be the sole guiding factor in determining this sentence.

[32] let me turn to the next issue which is the offence:

[33] I do not need to stress the seriousness thereof.

[34] On count 2 you were convicted of kidnapping

[35] The abduction of a six-year-old child results in the denial of her freedom of movement and her liberty. Indeed, it is common to consider the presence of violence or the circumstances that could significantly impact the victim. The defence contended that there is no evidence presented to the court indicating that Joshlin experienced any harm. This argument lacks any merit. It must entail the deprivation of an individual's liberty and freedom of movement. It will inevitably result in some emotional distress.

[36] This leads me to Count 1:

[37] The act is specifically directed at the exploitation of individuals for various purposes. In this specific instance, Mr. Appollis and Ms. Smith shared a parental relationship with Joshlin.

[38] I would like to bring to your attention the details of this offence. In August 2023, Ms. Smith expressed to Mr. Coetzee her dissatisfaction with her home. She wished to part with her child so that you and Mr. Appollis could enjoy a more fulfilling life. How negligent is that? I would like to remind you that I am referring to the offence.

[39] Additionally, I must address the interventions that occurred during the times Ms. Smith had to attend the rehabilitation centre on two separate occasions. The initial instance occurred when Joshlin was an infant. The Andrews family provided her with care, and I will now move ahead to the victim impact statements we had. I will revisit this and keep it at the forefront of our discussion.

[40] On February 18, discussions occurred following an incident that had caused you distress. The accusation of chicken theft against Mr. Appollis was, in your

opinion, a bold move by someone who you believe should be exposed for naming him as a suspect. This resulted in a passionate dispute between you and Mr. Appollis, ultimately culminating in Joshlin being pulled towards the house. A witness, acting independently, approached us to share their account. The behaviour in question appears to be part of a pattern, as I previously pointed out the evidence provided by Mr. Petersen regarding what the collateral sources reported to him, and your actions towards her remained unaddressed. The discussion occurred at that time.

- [41] Mr. Appollis stated that the motivating factor was your tendency to place blame on others for regarding your child as a commodity and selling her off. Ms. Lombard and Mr. Van Rhyn attended, both of whom are parents of young children. Mr. Van Rhyn, your daughter must have been three years old or younger if she is currently four.

The plan is now being implemented:

- [42] I take a moment to clarify that my focus is on the offence. The following day, Joshlin is sold for R20 000. Her whereabouts remain a mystery. The victim in this type of offence and their treatment is crucial. Dr. Van der Watt emphasised several factors that the Act requires me to consider. As I mentioned earlier, I will not be listing them in detail, as my intention is for you to grasp the gravity of the offence.

- [43] On the morning of the 19th, Mr. Appollis informs us that he fed Joshlin. He claims to have cared for her. She meets his gaze and makes her pitch, while Mr. Appollis observes in silence, leaving you to remain quiet. This is the offence: betraying the trust that she must have placed in you, Mr. Appollis, as a parent, despite not being her biological father, and you, Ms. Smith, as the one who gave birth to her; and you, Mr. Van Rhyn, as a good friend and the father of a small child.

- [44] Turning back to the defence, to the offence itself and the effect it has on the community we have heard, and I have heard the victim impact statement of Ms Olivier. Joshlin was a child in the community. We heard how she would go to some of the houses on the evidence presented here including Ms Olivier and how she would sit at that table. Ms Lombard and I am going to deal with her situation in a different hearing also looked Joshlin in the eye and gave her something to eat and did nothing to protect her.
- [45] Returning to the defence, to the offence itself and its impact on the community, we have heard, and I have listened to the victim impact statement of Ms. Olivier. Joshlin was a young member of the community. We learnt about her visits to various houses mentioned in the evidence, including Ms. Olivier's, where she would sit at that table. Ms. Lombard and I will address her situation in a separate hearing. She also looked Joshlin in the eye, offered her something to eat, and failed to take any action to protect her.
- [46] The community and society of Saldanha were deeply divided. We learnt about the thorough searches that occurred and a victim's perspective, as the wider community expresses their own victimhood. One individual conveyed to me through a statement yesterday, "I still cannot wear the clothes I wore when we searched." We have reached the fifteen-month mark. During the merits trial, we learnt that individuals continue to seek answers. We learnt about individuals from various places who participated and the resources utilised, yet the community was divided due to the actions of the three of you.
- [47] Ms. Maart speaks on behalf of her children; she sometimes refers to them as her learners. During her testimony in the merits trial, she described the individual who contacted her as one of my mothers. Speaking about a mother of a student in her class. We observed the tree. We observed the fingerprints of those young children who are now in Grade 2, along with the one that is missing.

- [48] We listened to the evidence regarding the growing concern within the community about the safety of their children and the fear of them going missing. Ms. Maart informs us that it has become increasingly common for parents to drop off and pick up their children due to feelings of insecurity. Your crime has significantly impacted the community.
- [49] Ms. Daniels, I regret having to single you out, but I want you to know that I have heard you. When your son, Ms. Smith, goes to school or rugby practice, your mother is uncertain about how to handle it if he is just a little late, and I believe this situation impacts not only the Saldanha community but also the extended family. The community has been impacted significantly, yet it is heartening to witness individuals coming together to advocate for children. One positive outcome of this situation is the opportunity I had to observe the remarkable discipline and unity within the community as they stand up for their dignity.
- [50] Given the community's interest in the offence, they have specific demands and express various outcries. I'm certain there are numerous individuals who would request a sentence that could be considered inhumane. That is why we eliminated it, as they do not consider even life imprisonment to be sufficient punishment for the damage inflicted on the community. However, I remind myself of what I previously shared with you in this judgement.
- [51] I discussed the two aspects of a sentence's purpose and how one should find a balance between these factors. I attempted to clarify how your individual situation, the nature of the offence, and societal interests intertwine in the sentencing process. I also reminded myself to approach this with compassion and humanity, to show mercy, and to avoid letting anger—whether my own or that of the community—influence my actions. Instead, I aimed to align with the community's wishes while maintaining a balanced perspective. I made an effort to avoid that.

[52] I have reviewed the minimum sentences and the prescribed sentences, and indeed, upon considering the prosecution's request, I should impose life imprisonment. It allowed me to consider the various ways to explain things to you. A sentence of imprisonment is undoubtedly the only fitting punishment. The inquiry is merely about the duration. You are all three relatively young, and indeed, one of the purposes of a sentence is to rehabilitate the offender. I recognise that there is always that potential. How can one reconcile societal interests with personal rehabilitation prospects when an individual commits a heinous crime?

[53] I believe that even if I were not constrained by a specific sentence, I would still have contemplated the most severe penalty I could impose. In my view, considering all the factors and circumstances I have outlined, it reflects your moral culpability. I acknowledge that at the time of the offences, you were using substances that may have influenced your actions; however, this does not serve as an excuse. If this was a factor that contributed to your offences, you had the chance to communicate that to me, but you did not think clearly at the time due to being under the influence. You certainly did not do that. Throughout the course of this trial, it appeared that you, Mr. Van Rhyn, and Ms. Smith found it amusing. At one point, I mentioned that during the testimony of certain witnesses, I noticed the captain was absent today as he was celebrating. You did not approach it with the seriousness it deserved. I cannot identify anything that warrants a lesser sentence than the most severe one I can impose.

[54] I understand that the second charge was integral to the overall planning, and I must mitigate the impact of that sentence. Before I announce the sentences in this matter, the prosecutor requested that I order your names to be entered into the National Child Protection Register. Given the specifics of this case, I am prepared to issue an order.

[55] Finally, I expressed during the merits trial my dissatisfaction regarding the appropriate adherence to the PACOTIP Act by the administrative systems that are to be established. I strongly encourage the government stakeholders to prioritise this matter and act promptly, as it is essential for safeguarding the vulnerable and fulfilling the goals of the Act. I am unable to place an order due to a lack of sufficient details. Mr. Van Rhyn has been deemed unfit to possess a firearm. Given the outcome for Ms. Smith and Mr. Appollis, I find it unnecessary to issue an order due to the sentence I intend to impose.

[56] The kidnapping charge does not have a set sentence due to the serious nature of the circumstances involving a minor child. I believe that a lengthy prison sentence should be enforced for that charge.

[57] Therefore, based on the reasons I have outlined, which I trust you have comprehended, I will now proceed to impose the sentences. Mr. Appollis, Mr. Van Rhyn, and Ms. Smith, I will announce the sentences simultaneously as they are identical. I will not make any distinction, despite Mr. Van Rhyn's previous convictions, while you, Mr. Appollis, and Ms. Smith do not have any.

[58] You are sentenced to life imprisonment for the charge of human trafficking. You are hereby sentenced to ten (10) years of imprisonment for the charge of kidnapping. Since I have imposed life imprisonment, there is no necessity for me to decide on the concurrency of the sentences, as they will be served concurrently by operation of law.

I also order for the entry of your names into The National Child Protection Register.

ERASMUS, ADJP
JUDGE OF THE HIGH COURT

Appearances

For The State: Z Swanepoel with A Heeramun

Instructed by: Director of Public Prosecutions

For The Accused: S Harmse, N Mkabhayi and R Sivnarain

Instructed by: Legal Aid South Africa