IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case number: AR78/2022P

In the matter between:

MENZI EMMANUEL MONDLI DLAMINI **APPELLANT**

and

THE STATE **RESPONDENT**

Coram: MNGADI and MOSSOP JJ
Heard: 5 September 2025
Delivered: 12 September 2025

ORDER

On appeal from: the Estcourt Regional Court (sitting as the court of first instance):

1. Save to the extent set out in paragraph 2 below, the appellant's appeals against the sentences imposed upon him of:

(a) Life imprisonment on a charge of murder; and

(b) Life imprisonment on a charge of rape,

are dismissed.

2. In terms of the provisions of s 280(2) of the Criminal Procedure Act 51 of 1977, it is ordered that the sentences referred to in paragraphs 1(a) and 1(b) above shall be served concurrently with each other.

JUDGMENT

Mossop J (Mngadi J concurring):

Introduction

[1] The appellant stood trial in the Estcourt Regional Court on three charges: a count of housebreaking with intent to rape and rape, a count of murder and a count of rape. He was convicted as charged on all three counts after pleading not guilty to each and was sentenced to eight years' imprisonment on the count of housebreaking, life imprisonment on the count of murder and life imprisonment on the count of rape.

[2] Given the two sentences of life imprisonment imposed upon him, the appellant enjoys an automatic right of appeal in terms of the provisions of s 309(1)*(a)* of the Criminal Procedure Act 51 of 1977 (the CPA). Before us is the appellant's appeal against his sentences only on the counts of murder and rape. Before considering the charges and the sentences imposed, it will be helpful to briefly consider the facts found to be proven by the regional magistrate.

The factual landscape

[3] The facts are not complicated, but they are, unfortunately, brutal. The victim, Ms N[...] M[...] (Ms M[...]), was 59 years young and lived alone when she was murdered in her home near Ntabamhlophe, KwaZulu-Natal on the evening of 10 September 2014. Before she was murdered, her home had been forcibly opened, and she had been raped.

[4] Other than Ms M[...] and her assailant, there were no eyewitnesses to these cruel events. That they were cruel brooks of no doubt: the cause of Ms M[...]'s death

was found to be strangulation and the classic indication of that mechanism of death was present, namely a fractured hyoid bone, which is located in the anterior of the neck between the chin and the thyroid cartilage.

[5] The appellant was linked to the violation, and the death, of Ms M[...] by way of the presence of deoxyribonucleic acid (DNA) evidence found at the crime scene that, upon examination and comparison, matched his own DNA. That DNA evidence was extracted from a cloth found lying on Ms M[...]'s bed that contained some of the appellant's blood on it and in semen found post-mortem within Ms M[...]'s vagina.

[6] There was no dispute over these findings at the trial, and it was accepted by the defence that the appellant's DNA was extracted from the bloody cloth and from the semen found in Ms M[...]'s vagina. It was also accepted that such evidence had been properly harvested, preserved and forwarded to the forensic sciences laboratory for examination after Ms M[...]'s lifeless body was found, partially nude, in the yard adjoining her home on the morning following her murder.

[7] The person who, without justification, took the life of Ms M[...] was the appellant. He has conceded, ultimately, that he did so by electing not to challenge his conviction on the murder and rape charges. He, however, did not concede his guilt at the trial and, instead, propagated the absurd version that he and Ms M[...], who was 32 years his senior at the time of her death, were secret lovers. That version can only have been concocted by the appellant in a desperate, but vain, attempt to explain the presence of his semen in Ms M[...]. Indeed, he came up with explanations, which were contrived and fanciful, in my view, to explain all the damning evidence that the State led to establish his guilt: for example, scratches on his neck that would, no doubt, have been caused by Ms M[...] as she struggled with the appellant for her life, were ascribed by him to his being attacked, for no plausible reason, by two unknown men on the very night that Ms M[...] was murdered. Whilst this alleged attack on him left physical marks upon his body, his attackers did not attempt to take anything from him.

[8] The DNA evidence was powerful and permitted the appellant no room to manoeuvre and could only potentially be avoided by a concocted story. The

appellant duly obliged with such a concocted story but the version that he advanced was simply so incredible that it was easily, and rightly, rejected by the regional magistrate.

The charge of rape

[9] There is an issue that must be addressed before considering the adequacy, or not, of the sentence imposed upon the appellant, namely whether the count of rape attracted a minimum sentence of life imprisonment. In prosecuting the appellant on this count, the State invoked the provisions of the Criminal Law Amendment Act 105 of 1997 (the Act). The trial court found that the offence defined in part I of the schedule applied and duly imposed the prescribed minimum sentence.

[10] None of the grounds mentioned in part I of the schedule fit the facts of this matter, bar one. That ground is that the rape involved the infliction of grievous bodily harm upon Ms M[...]. The charge put to the appellant did not isolate this specific ground, but it did indicate to the defence that, broadly, the State relied upon the provisions of s 51(1) of the Act. The defence was, therefore, adequately forewarned.

[11] The grievous bodily harm required to place the rape of Ms M[...] in part I of the schedule was her strangulation and ultimate death. However, while there was medical evidence adduced at the appellant's trial, there was no evidence that fixed the time when Ms M[...] was killed. Had she been strangled during the course of the rape or had the appellant formed the decision to murder her after the act of rape was already completed? If it is the former, then life imprisonment could have been imposed; if it is the latter, then it may not have been a sentencing option available to the regional magistrate.

[12] There are conflicting decisions on this issue. In *S v Thole*,[1] the offences, as in this matter, were rape and murder. The appellant pleaded guilty to both offences but the court recording the plea found that the appellant formed the intent to rape

[1] *S v Thole* 2012 (2) SACR 306 (FB) (*Thole*).

first and the intent to murder later after the rape was completed. As the schedule provided that the rape had to involve the infliction of grievous bodily harm, the meaning of the word 'involved' was considered. It was found to mean to include something as a 'necessary part of an activity, event or situation'.[2] The stabbing of the victim which led to her death was found not to be a part of the rape and thus the appropriate sentence was ten years' imprisonment and not life imprisonment.

[13] However, in this division in *S v Tuswa*,[3] the court found the meaning of the word 'involved' to be slightly different to the meaning found in *Thole*. It was found to '... include something as a necessary part or result of an activity...'. Killing a victim to avoid detection for a rape committed may, accordingly, be a result of the offence of rape.

[14] Clarity on the issue was provided in 2014 by Goosen J in *S v September*.[4] In that matter, as in this matter, the victim was strangled to death after her rape. Goosen J expressed himself as follows:

'[5] [Schedule 2] also refers to the crime of rape involving the infliction of grievous bodily harm. It is not immediately apparent whether what is contemplated is the infliction of grievous bodily harm in the commission of the rape as a circumstance wholly distinct from that contemplated as an aggravating feature in relation to murder.

[6] The grievous bodily harm upon which the prosecution relies is the strangulation and death of the deceased.

[7] Whatever the ambit of the provisions may be, the effect, it seems to me, is to bring about a situation where in every instance in which the crime of rape is committed and the victim of the rape is murdered, either during or after the commission of the rape, an accused person convicted of both the rape and the murder faces life imprisonment on account of each of the offences.'

[15] I find myself in agreement with this reasoning. I conclude that the sentence of life imprisonment was accordingly available to the regional magistrate.

[16] I turn now to consider the appropriateness of the sentences imposed.

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[2] Ibid para 11.
[3] *S v Tuswa* 2013 (2) SACR 269 (KZP) para 31.
[4] *S v September* [2014] ZAECGHC 38 paras 5-7.

The appellant's submissions on sentence

[17] Mr *Mbatha* (no relation to the deceased), who appears for the appellant, made the submission in his heads of argument that the sentences of life imprisonment imposed upon the appellant were:

'… grossly inappropriate and induce a sense of shock'.

[18] In sentencing a convicted person, it is not controversial that the judicial officer exercises a discretion.[5] It is also not capable of being disputed that an appeal court will be slow to interfere with a sentence imposed by a lower court, and that each case depends on its own facts.[6] An appeal court, such as this court, consequently may not disturb a sentence imposed by the sentencing court simply because this court may have imposed a different sentence. For an appeal court to intervene and upset a sentence imposed by the sentencing court, there must be evidence of a misdirection of such seriousness that demonstrates that the sentencing court either did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing the sentence.[7]

[19] The appellant's heads of argument suggest that the regional magistrate misdirected herself by not sufficiently considering the prospects of the appellant being rehabilitated. Mr *Mbatha* suggested in this regard that, given the appellant's age, 33 at the time of conviction, it would appear unlikely that he would reoffend once released from prison. Quite frankly, I do not understand what the appellant's age has to do with him re-offending in the future. Age does not automatically bring wisdom and obeisance to the law and is therefore not a reliable predictor, in my view, of the future likelihood of further crimes being committed. What is, in my view, a far more certain predictor of future conduct is past conduct. And there, the appellant has some difficulties. In 2008, six years before the events that we are concerned with, he was convicted of robbery and sentenced to eight months' imprisonment that was suspended for a period of three years. In 2009, he was convicted of housebreaking and was sentenced to five years' imprisonment, which

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[5] *S v Pieters* 1987 (3) SA 717 (A) at 727F-H; *S v Sadler* 2000 (1) SACR 331 (SCA) para 8.
[6] *S v Zulu* 2003 (2) SACR 22 (SCA) para 11.
[7] *S v Pillay* 1977 (4) SA 531 (A) at 535E-F; *S v Hewitt* [2016] ZASCA 100; 2017 (1) SACR 309 (SCA) para 8.

sentence was again suspended, this time for five years. None of these exposures to the criminal justice system seem to have caused the appellant to reflect on his conduct and to mend his ways and there is evidence of a trend in his behaviour. I am, therefore, not confident that Mr *Mbatha* is correct in his premise.

[20] It was further suggested by Mr *Mbatha* that the sentences imposed upon the appellant were:

'… unjust in that it is disproportionate to the crime, the needs of society as well as that of the Appellant.'

[21] Again, I fear that I am in disagreement with Mr *Mbatha*. The gift of life is the most precious asset that a person possesses. To snatch that life away before it has run its full course, however long that may be, is rightly regarded by society as a heinous crime. Likewise, the act of rape, in respect of which the appellant now concedes his guilt, is a most repulsive crime that strikes at the essence of womanhood. It impugns the victim both physically and mentally, invades her dignity and humiliates and degrades her.

[22] Thus, the crimes of murder and rape rank as of the most serious of crimes with which a person can be charged. They must, therefore, of necessity, attract sentences of considerable severity when proved. Ironically, Mr *Mbatha* acknowledged in his heads of argument that the appellant was, indeed, convicted of profoundly serious crimes and that lengthy sentences were warranted.

[23] Because of the serious nature of the offences of murder and rape, the legislature has decreed that minimum sentences are to be imposed upon conviction for committing those specific offences. As was stated in *S v Malgas*,[8] the legislature intended that these minimum sentences should be imposed and should not be avoided by the alleged existence of 'flimsy' reasons for their non-imposition.

[24] Thus, not only is the imposition of the sentences of life imprisonment for the offences of murder and rape not 'unjust', as contended for by Mr *Mbatha*, but their

[8] *S v Malgas* 2001 (1) SACR 469 (SCA) para 25.

imposition is also specifically what the legislature calls for in the absence of substantial and compelling circumstances being established by the appellant. In my view, no substantial or compelling circumstances were demonstrated to exist by the appellant. Certain personal facts were disclosed to the court on his behalf. These included that the appellant was 33 years of age at the time of his conviction and that he was the father of three children. In this regard, his counsel submitted that if the appellant's personal circumstances were:

'… to be considered cumulatively, the Court may find that there are indeed compelling and substantial circumstances for the Court not to impose minimum sentence.'

[25] I am not entirely sure what this is intended to mean. How are personal circumstances considered cumulatively? Is it suggested that if a number of uncompelling circumstances are mentioned one after the other, they transform themselves and become compelling circumstances? It appears to me that all that can truly be submitted is that all of the circumstances raised by the appellant must be considered by the court and must be weighed up and assessed when it is determined whether they amount to substantial and compelling circumstances.

[26] The regional magistrate approached the question of sentence properly and thoroughly and considered all the factors that are ordinarily taken into account. This included the appellant's personal circumstances. However, as was stated in *S v Vilakazi*:[9]

'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 the kind of "flimsy" grounds that *Malgas* said should be avoided.'

[27] In arriving at the appropriate sentence to be imposed upon the appellant, the regional magistrate considered the time that he had spent in custody awaiting trial, which amounted to just over a year. A year can be a long time in a person's life, but in the life of the criminal justice system, it is, unfortunately, not a long time.

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[9] *S v Vilakazi* 2009 (1) SACR 552 (SCA) para 58.

Ordinarily, a period spent in custody awaiting trial is deducted from any sentence of imprisonment imposed upon a convicted person. But that cannot be done where the prescribed minimum sentence is life imprisonment and there are no substantial and compelling circumstances to justify the imposition of another, less severe sentence.[10] In the circumstances, the regional magistrate found there to be no substantial and compelling circumstances present, and she decided not to depart from the prescribed minimum sentences. In my view, she was correct not to do so.

[28] In sentencing the appellant, the regional magistrate did not indicate whether the sentences that she imposed would be served concurrently or consecutively. This, however, did not amount to an irregularity on her part.[11] Sections 280(1) and (2) of the CPA provide as follows:

'(1) When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.

(2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently.'

If nothing is said by the sentencing court, the default position is that the sentences must be served consecutively.

[29] Section 39(2*)(a)*(i) of the Correctional Services Act 111 of 1998, however, reads as follows:

'(2)*(a)* Subject to the provisions of paragraph *(b)*, a person who receives more than one sentence of incarceration or receives additional sentences while serving a term of incarceration, must serve each such sentence, the one after the expiration, setting aside or remission of the other, in such order as the National Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs such sentences shall run concurrently but-

(i) any determinate sentence of incarceration to be served by any person runs concurrently with a life sentence or with sentence of incarceration to be served by such person in consequence of being declared a dangerous criminal…'

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[10] *S v Solomon and Others* 2021 (1) SACR 533 (WCC).
[11] *S v Yose and Another* 2022 (2) SACR 603 (WCC).

[30] Thus, strictly speaking, there may have been no need for the regional magistrate to have made the determination of how the sentences are to be served. I do think, however, that it is a salutary practice for regional magistrates to mention how the sentences that they impose will be served when sentencing an accused person who undoubtedly would not have personal knowledge of the legislation to which I have just referred. To avoid any possible uncertainty arising when this judgment is later considered and construed, I deem it appropriate to record how the sentences are to be served in the order of this court.

Conclusion

Being strangled is an inherently intimate and yet terrifying way to perish. The strangler, literally, employs a hands-on attack to deprive his victim of life by robbing her of air, then her consciousness and then her life. I must accordingly disagree with Mr *Mbatha's* opening proposition that the sentences imposed upon the appellant were grossly inappropriate and induced a sense of shock. I am more certain of this when I consider that the appellant treated Ms M[...] with utter disrespect and discarded her body, partially clad, out in the open as if she did not matter, and as if she was a piece of disposable refuse. She was not a piece of refuse but was a human being. Her life did matter, and she was deserving of respect and dignity. She did not receive either at the hands of the appellant. The sentences accordingly do not induce in me a sense of shock.

Order

[31] In the circumstances, I would propose the following order:

1. Save to the extent set out in paragraph 2 below, the appellant's appeals against the sentences imposed upon him of:

(a) Life imprisonment on a charge of murder; and

(b) Life imprisonment on a charge of rape,

are dismissed.

2. In terms of the provisions of s 280(2) of the Criminal Procedure Act 51 of 1977, it is ordered that the sentences referred to in paragraphs 1(a) and 1(b) above shall be served concurrently with each other.

MOSSOP J

I agree and it is so ordered:

MNGADI J

APPEARANCES

Counsel for the appellant:	Mr B Mbatha
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Counsel for the respondent:	Mr J Khathi
Instructed by:	Director of Public Prosecutions Pietermaritzburg