



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: A299/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 18 SEPTEMBER 2025

SIGNATURE

In the matter between:

AARON THABISO MNYAYI

APPELLANT

and

THE STATE

RESPONDENT

Summary: Automatic appeal against imposition of life sentence. Appellant is a serial offender and multiple rapist. Offences committed over a long period of time. One of the rape victims strangled and killed. Personal circumstances nothing exceptional. Court a quo correctly found no compelling and substantial reasons to deviate from minimum sentence. Appeal against conviction dismissed.

ORDER

The appeal against sentence is dismissed.

JUDGEMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 18 September 2025.

MORE AJ (DAVIS J CONCURRING)

Introduction

[1] The appellant, Mr Aaron Thabiso Mnyayi was duly represented during the trial in the court *a quo*. On 11 October 2024 he pleaded guilty in terms of section 112 of the Criminal Procedure Act 51 of 1977 (CPA) at the Regional Court, Nigel to the following eight counts:

Count 1: Attempted Murder

Count 2: Rape

Count 3: Rape
Count 4: Robbery
Count 5: Rape
Count 6: Robbery
Count 7: Rape
Count 8: Murder

[2] Pursuant to the guilty pleas, the learned magistrate sentenced the appellant as follows:

Count 1: 5 years imprisonment
Count 2: 10 years Imprisonment
Count 3: 10 years Imprisonment
Count 4: 5 years Imprisonment
Count 5: 10 years Imprisonment
Count 6: 5 years Imprisonment
Count 7: 10 years Imprisonment
Count 8: Life Imprisonment

[3] The trial court ordered that the sentences imposed in counts 1 to 7 to run concurrently with sentence imposed in count 8. The appellant was further declared unfit to possess a firearm. The court further ordered that his name be entered into the register of sexual offenders in terms of section 50 of the Sexual Offenders Act 32 of 2007.

[4] This is an automatic appeal following upon the conviction and sentence in respect of the life sentence imposed in respect of Count 8.

The appeal

[5] The grounds of appeal are summarised as in the appellant's Notice of appeal as follows:

- 5.1 It was argued that an effective term of life imprisonment is strikingly and shockingly inappropriate in that:
 - 5.1.1 It is out of proportion to the totality of accepted facts in mitigation.
 - 5.1.2 In effect it disregards the period the appellant spent in custody awaiting trial.
- 5.2 The court erred in not finding the presence of substantial and compelling circumstances which justified the court to deviate from imposing a lesser sentence than the prescribed minimum sentence.
- 5.3 The court erred in not taking into account that the appellant was a first offender.

Ad Sentences imposed and arguments in respect thereof

[6] The material facts surrounding the commission of the offences were explained in the appellant's section 112 statement. Before dealing therewith, at the outset, the dates of the commissioning of the offences are significant. Chronologically, they are as follows: the first offences were those of rape and robbery committed upon the same victim on 1 April 2013. These constituted counts 3 and 4. The second set of offences were again rape and robbery committed on another victim on 19 July 2014. These constituted counts 5 and 6. On 2 September 2018, the appellant offended again, by committing the rape which formed the subject of count 7. Thereafter, on 27 February 2020 he raped and

subsequently murdered a young woman by strangling her. These offences constituted charges 2 and 8. Finally, on 22 May 2021 he committed the attempted rape which formed the subject of count 1 and which led to his eventual arrest.

[7] In all the counts of rape the state relied on section 51(1) (a), and (b), read with Schedule 2 of the CLAA where a minimum sentence of 10 years imprisonment was indicated in the annexures to each respective charge sheet. In respect of count 8 the state relied on section 51(1), read with Part 1 of Schedule 2 of the CLAA and warned the appellant in the charge sheet of the imposition of a life sentence upon conviction.

[8] Counsel on behalf of the appellant raised the issue that on the day of the trial the provisions of the CLAA were not explained to the appellant. The court drew his attention the abovementioned annexures which forms part of the record and that, since the appellant was represented at the court a quo it follows that every aspect of the charge, the docket and the annexures were made available to the appellant before the commencement of the trial. The appellant, fully armed with this knowledge, thereafter made a fully detailed disclosure of the basis of his pleas of guilty, with the help of his legal representative.

[9] In fact, during the address on sentence, the appellant's counsel conceded that "... *the accused indeed pleaded guilty to eight very serious charges, knowing what the consequences would be*" and "*the defence is now aware that count 8 carries a term of life imprisonment*". There is therefore no merit in this attempted ground of appeal.

[10] Having regard to the facts underlying the pleas of guilty to all counts, the court a quo found no substantial and compelling circumstances as envisaged in section 51(2) of the CLAA which justified the imposition of a lesser sentence as

contemplated by section 51(3) (a) of the CLAA and then imposed life imprisonment in respect of count 8.

[11] On behalf of the appellant it was submitted that the court a quo erred in not finding the cumulative effect of his personal circumstances. It was further submitted that the court a quo erred in over-emphasising the seriousness of the offences over other aspects. It was further submitted that life imprisonment is imposed is disproportionate to the circumstances and ought to be set aside and be replaced with a suitable sentence.

[12] On behalf of the respondent it was submitted that the aggravating circumstances far outweigh the mitigating circumstances. It was submitted that these offences took place over a period of 8 years which could have given the appellant an opportunity to reflect on his criminal behaviour. It was submitted further that he did not only rape the victims but also robbed some and killed the victim in count 2.

[13] It was further submitted that the plea of guilty must not be regarded as a neutral factor as he showed no empathy to his victims until he was arrested. It was also submitted that he even absconded for a period of two years during his trial. It was submitted that the trial court did not misdirect itself in not finding the substantial and compelling circumstances and that the sentence imposed is not disturbingly inappropriate and that the appeal against sentence be dismissed.

[14] In respect of the rape charges, the appellant, after having concluded the formal admissions of guilt, of his own free will, added the following (in writing, which was read into the record): "*...the complainants in the abovementioned rape charges were all unknown to me and were all random victims. I came across the complainants where they were walking alone, I the approached them, grabbed them and raped them as charged*". in respect of charges 2 and 8, he expressly

admitted that he committed the murder by strangulation, after he had raped his victim. He offended a little over a year later, by yet attempting to rape again.

Legal framework

[15] Ponnann JA made these remarks pertaining to remorse and plea of guilty in *S v Matjitji* **2011 (1) SACR 40 SCA**:

“Remorse was said to be manifested in him pleading guilty . . . It has been held quite correctly that, a plea of guilty in case of an open and case against the accused person is a neutral fact. The evidence against the accused was overwhelming. There is moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus, genuine contrition can only come from appreciation and acknowledgement of the extent of one’s error. Whether the offender is genuinely remorseful and not simply feeling sorry for himself or herself at having been caught, is factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should look. In order for the remorse to be valid consideration, the penitence must be sincere, and the accused must take the court fully into his confidence. Until and unless that happens the genuineness of the contrition alleged to exist cannot be determined. Afterall, before the Court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation on 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”.

[16] It is clear from the facts of this case that the appellant was not remorseful of his actions. Having regard to the series of offences, it is clear that if he was not caught he was going to continue to terrorise the communities where he resided. This is also indicated by his action when he absconded for two years during the course of his trial. If he was not rearrested he would have continued with his life as though nothing happened. His plea of guilty might as well be interpreted to mean that he did not have any defence as the evidence against him was overwhelming and he realised that even if he does not plead guilty he will be convicted anyway. One should be careful therefore, to read any remorse into his guilty plea.

[17] It is trite law that when the court consider an appropriate sentence all factors should be given due weight. 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* 1969 (2) SA 537 (A).

[18] These factors are (i) the personal circumstances of the offender, including his character, conduct in life and personality, and everything that influenced the commission of the offence; (ii) the nature and seriousness of the offence committed; and (iii) the interests of the community, including the necessity for a level of uniformity in sentencing.

[19] The Supreme Court of Appeal in *S v Chapman* 1997(3) SA 341 (SCA) s stated that *'women in this country have a legitimate claim to walk peacefully on the streets, to enjoy shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without fear, apprehension*

and the insecurity which constantly diminishes the quality and enjoyment of their lives.

[20] In *S v Van Loggenberg* 2012 (1) SACR 462 (GSJ) at par [6], Willis J said that a sentence has five important functions : "(i) *It must act as a general deterrent, in other words, it must deter other members of the community from committing such acts or thinking that the price of wrongdoing is worthwhile;* (ii) *it must act as a specific deterrent, in other words, it must deter this individual from being tempted to act in such a manner ever again;* (iii) *it must enable the possibility of correction, unless this is very clearly not likely;* (iv) *it must be protective of society, in other words, society must be protected from those who do it harm;* (v) *it must serve society's desire for retribution, in other words, society's outrage at serious wrongdoing must be placated*".

[21] These are very serious offences and the appellant needed to be punished appropriately. The crimes of rape and murder are very prevalent in this country. He did not only rape the victims, but he continued to rob some of the victims and even killed the victim in count 2.

[22] Sentencing is widely accepted as particularly difficult part of the criminal justice process. See *S v Kok* 1998 (1) SACR 532 (N) 551. Given the above, sentencing should always be considered and passed dispassionately, objectively and upon a careful consideration of all relevant facts.

[23] In my view the appellant is a criminal who needs to be removed from the society to protect members thereof against offenders like him. He took advantage of vulnerable and unsuspecting women and this trauma will live with them forever. He took a life of an innocent woman without thinking twice. It shows

that he has no regard to life. I am therefore of the view that the learned magistrate correctly found that there are no substantial or compelling circumstances which justified the imposition of a lesser sentence.

[24] In this matter the minimum sentence definitely does not constitute an injustice neither would it be disproportionate to the circumstances. Even when considering the appellant's personal circumstances cumulatively they still do not qualify as substantial and compelling circumstances. The personal factors were simply that the appellant was 33 years of age at the time of sentencing (meaning that he was not a youngster anymore when he started offending), was not married, but had two minor children and was, at the time of his arrest, employed as a taxi driver, earning R 3 600,00 per month. His counsel argued that he was a first offender but, having regard to the multiple charges, this cannot be so. He was a serial offender.

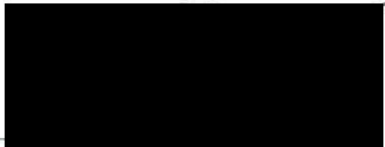
[25] There is no indication that the trial court overemphasised the seriousness of these offences over his personal circumstances. There is no basis to interfere with the sentence imposed by court a quo. I am of the view that the trial court exercised its discretion properly and judicially in imposing life imprisonment.

Order

[26] In the circumstances and for the reasons set out above, the following order is made: The appeal against sentence is dismissed.


BMT MORE AJ (MS)
Acting Judge of the High Court
Gauteng Division, Pretoria

I agree


N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 August 2025

Reasons delivered: 18 September 2025

APPEARANCES:

For the Appellant:

Mr M B Kgagara

Attorney for the Appellant:

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For the Respondent:

Adv A P Wilsenach

Attorney for the Respondent:

Director of Public Prosecution, Pretoria