

THE REPUBLIC OF SOUTH AFRICA



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

Case Number: A 143 / 2025

In the matter between:

AUDREY LE ROUX

Appellant

and

THE STATE

Respondent

Coram: Wille J et Cooper AJ

Heard: 10 October 2025

Delivered: 15 October 2025

Summary: Automatic Appeal from the Regional Court – Life Sentence – Rape of a Minor, Previous Conviction for the Rape of a Minor – Interests of Society – Rehabilitation - Deterrence

JUDGMENT

THE COURT:

INTRODUCTION

[1] This is an '*automatic*' appeal from the lower court following section 309(1) of the Criminal Procedure Act, 51 of 1977, against the sentence only. The appellant is afforded an automatic right of appeal because he was sentenced to life imprisonment by the lower court pursuant to being convicted of one count of sexual penetration of a minor (rape) in accordance with the targeted legislation dealing with sexual offences of this nature¹.

[2] The appellant was also convicted of assault with the intent to cause grievous bodily harm in connection with a second complainant. The appellant was legally represented during his trial proceedings. He pleaded guilty to the offences of rape and assault with the intent to cause grievous bodily harm. The appellant was also charged with the offence of assault with the intent to do grievous bodily harm in respect of the first complainant (i.e. the rape victim) but offered up a plea of not guilty in connection therewith. He was acquitted on this charge as no evidence was tendered against him (in connection with this alleged assault) by the prosecution. The convictions against the appellant (on both counts) must be read with the relevant provisions of the minimum sentencing regime.²

[3] The appellant entered a plea explanation statement into the record, which was accepted by the prosecution. The circumstances surrounding the commission of the offences, as contained in the plea explanation, were barely sufficient to sustain a conviction and were less than a sterling effort on behalf of the appellant's legal representative. This notwithstanding, on appeal, we are bound by the content of this statement regarding the circumstances surrounding the commission of the offences, read in conjunction with the record of the sentencing proceedings. In respect of the conviction of assault with the intent to do grievous bodily harm, the appellant was sentenced to ten years' imprisonment.³

[4] The automatic right of appeal applies only to the sentence of life imprisonment and the appellant's legal representative wisely conceded this. Moreover, the notice of appeal records that the appeal is '*..against [the appellant's] sentence of life imprisonment imposed ... on one count of Rape handed down on 24th of April 2025..*'. We thus record that we are

¹ Section 3 of the Sexual Offences and Related Matters Amendment Act, 32 of 2007.

² Section 51(1) of the Criminal Law Amendment Act, 105 of 1997.

³ This sentence is not before us on appeal.

confined in this appeal to consider the life imprisonment sentence in connection with the rape conviction only and nothing else.⁴

EVIDENCE

[5] On the day of the offence, the first complainant (the victim of the rape) was in the company of a friend (who was the second complainant, and in respect of whom the appellant was charged and convicted of assault with intent to cause grievous bodily harm). Out of the blue, they were accosted by the appellant. He struck the second complainant with a stone (brick) on her head. The first complainant ran away, and the appellant pursued her. The appellant caught up with her, dragged her into the bushes, and raped her. Both complainants were minors at the time.⁵

[6] The admitted clinical findings by the medical doctor are of some significance. The examination revealed that the victim of the rape only weighed 48 kilograms, and at the time that she was raped, she was thirteen years old. The medical findings (which were admitted) also indicated that the victim may have been assaulted before she was raped.⁶

CONSIDERATION

OVERVIEW

[7] The appellant was convicted of a contravention of the provisions of section 3 read with sections 1, 55, 56(1), 57, 58, 59, 60, 61 and 68 of the Criminal Law Amendment Act (Sexual Offences and Related Matters), read with sections 256, 257, 261 and 281 of the Criminal Procedure Act 51 of 1977. Sections 51 and Schedule 2 Part 1 of the Criminal Law Amendment Act, 105 of 1997 and the provisions of sections 92 (2) and 94 of the Criminal Procedure Act 51 of 1977 also found application.⁷

[8] The Supreme Court of Appeal has eloquently described crimes of this nature as follows:

‘...Rape must rank as the worst invasive and dehumanising violation of human rights. It is an intrusion of the most private rights of a human being, in particular a woman, and any such breach is a violation of a person’s dignity which is one of the pillars of

⁴ In this appeal we are dealing solely with the sentence of life imprisonment.

⁵ They were walking together when they were confronted by the appellant.

⁶ The content of the medico-legal examination report (J88) was admitted as being correct (Exhibit B) and records that the appellant hit the first complainant “*over the head with a rock*”.

⁷ Act No, 32 of 2007.

*our Constitution. There does not seem to be any significant decline in the incidence of rape since the publication of the statistics referred to above ... No matter how they are viewed, society has called, on more than one occasion, for the courts to deal with offenders of such crimes sternly and decisively....*⁸

[9] The appellant's legal representative focused on a pre-sentence report and addressed the court regarding the mitigation of the sentence. The prosecution elected to address the court in aggravation of the sentence to be imposed. The judicial officer in the lower court found that no substantial and compelling circumstances existed that justified a deviation from the prescribed minimum sentence of life imprisonment.⁹

GROUND OF APPEAL

[10] The appellant's case is that the lower court misdirected itself in that: (a) it failed to take into consideration that the appellant had been in custody for about 18 months before he was convicted and sentenced; (b) most of the appellant's previous convictions were not relevant to the imposition of his life sentence; (c) the appellant took full responsibility for his actions and pleaded guilty to the charge of rape; (d) substantial and compelling circumstances existed warranting a reduction in the sentence of life imprisonment; (e) it failed to consider the rehabilitation of the appellant and, (f) considered factors which the appellant did not admit.¹⁰

PERSONAL CIRCUMSTANCES OF THE APPELLANT

[11] The appellant is unmarried and has a fourteen-year-old child. After the incarceration of the appellant, a social worker investigated the living circumstances of the child and found them to be unsuitable. The child was removed and placed in the care of his maternal grandmother. It was suggested that the appellant cared for his sister's children after she passed away, but no detail or further information was provided.¹¹

[12] Regrettably, the appellant left school during grade five, and he was thereafter employed before his incarceration as a general worker in the construction industry. He has previous convictions ranging from the possession of drugs, theft and an attempted housebreaking with intent to steal. The appellant confirmed that he used dependence-producing substances. The most relevant previous conviction for this appeal is his last

⁸ S v Nkunkuma and Others (101/2013) [2013] ZASCA 122; 2014 (2) SACR 168 (SCA)

⁹ Thus, the sentence of life imprisonment was imposed.

¹⁰ It is not clear precisely what factors the appellant did not admit.

¹¹ This was challenging to understand as the appellant had been previously incarcerated.

conviction for the rape of a minor, which occurred on 27 May 2010. For this, he was sentenced to five years' imprisonment. Two years of this sentence were suspended for a period of five years, subject to certain conditions. According to the appellant's legal representative, the appellant tendered a plea of guilty and thus saved the complainants from having to testify. This, the appellant submits, is a complete acknowledgement of his responsibility for the offences upon which he was convicted, indicating remorse.¹²

AGGRAVATING FACTORS

[13] The rape of a minor is a grave offence. The prosecution contends that the appellant's plea of guilty was and is not a sign of genuine remorse because he had no other option but to plead guilty to the offence due to the overwhelming evidence that stacked up against him.¹³

[14] The victim of the rape and the complainant regarding the assault were both vulnerable young women. The rape victim attempted to escape but was actively pursued by the appellant. Both complainants suffered severe trauma because of the crimes perpetrated by the appellant.¹⁴

[15] Most importantly, the appellant is a second offender for a sexual offence perpetrated against a minor. The probation officer in her pre-sentencing report investigated the circumstances of both complainants. The victim of the rape experienced nightmares and dropped out of school due to being ridiculed about what had happened to her.¹⁵

[16] The complainant in the assault with intent to do grievous bodily harm charge has struggled to come to terms with the trauma that she suffered. She too dropped out of

¹² No actual genuine remorse was forthcoming from the appellant. As Ponnar JA pointed out in *S v Matyityi* 2011 (1) SACR 40 (SCA) at par 13, '*...There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus, genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. 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. 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...*'

¹³ This, on the face of it, seems to be a correct assessment on the disputed issue of remorse.

¹⁴ This was not the subject of any dispute.

¹⁵ Exhibit E.

school, became irritable and has lost interest in activities she once enjoyed. According to the medical report, she suffered a laceration to the head, which required stitches.¹⁶

CONCLUSION

[17] In summary, the appellant submits that the cumulative effect of the factors listed above should have been regarded as substantial and compelling, sufficient to deviate from the prescribed minimum sentence. It is a trite law that in sentencing, the punishment should fit the crime and the offender, be fair to society and the offender, and be blended with mercy.¹⁷

[18] An appeal court's discretion to interfere with a sentence may be exercised: (a) when there has been an irregularity that fails justice; (b) or when the court *a quo* misdirected itself to such an extent that its decision on sentencing is vitiated, or (c) when the sentence is so disproportionate or shocking that no reasonable court could have imposed it. As regards an appeal court's powers when considering an appeal against a minimum sentence, the following is apposite:

*'...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's exercising its discretion properly, simply because it is not the sentence which it would have imposed or that it finds 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 sentences 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...'*¹⁸

[19] Crimes in general, but especially against women and children, offend against the aspirations and ethos of all South Africans. Not only do crimes against women in this country amount to a severe invasion of the dignity of the victims, but these crimes also do

¹⁶ Exhibit C.

¹⁷ S v Rabie 1975(4) 855 (AD) at 862 G.

¹⁸ Tafeni v S (A 282/15) [2015] ZAWCHC 150; 2016 (2) SACR 720 (WCC) at par 8, with reference to S v PB 2013 (2) SACR 533 (SCA) at para 20.

not contribute to our claims that we live in a gender-equitable and just society. This crime perpetrated against a thirteen-year-old child renders it even more reprehensible.¹⁹

[20] The appellant was forty years old at the time of sentencing. Following section 73(1)(b) of the Correctional Services Act, a person sentenced to life imprisonment theoretically remains in prison for the rest of his or her natural life. Life imprisonment, in practice, is typically regarded as a sentence of twenty-five years. In this connection, the parole provisions that may become relevant and to the benefit of the appellant are indicated as follows:

*‘... A person sentenced to life imprisonment may not be placed on parole until he or she has served at least twenty-five (25) years of the sentence, but such a prisoner may, on reaching the age of sixty-five (65) years, be placed on parole after he has served at least fifteen (15) years of the sentence...’*²⁰

[21] After careful consideration, we find no redeeming factors that would mitigate the appellant's sentence of life imprisonment to his benefit. We find only aggravating factors. We say this despite the appellant having spent a significant period incarcerated as a pre-trial prisoner. When an offender has been detained as an awaiting trial prisoner for an extended period, this may be considered when an appropriate sentence is imposed. Although it may be a factor worth considering, it is not a substantive and compelling circumstance on a strict interpretation of the law.²¹

[22] However, nothing prevents this court from considering the period during which the offender has been incarcerated, pending trial, when imposing the appropriate sentence. However, this does not apply mechanically through an arithmetic calculation.²²

[23] A court is expected to depart from the prescribed minimum sentence regime if it can find and identify substantial and compelling circumstances to justify such a departure to the appellant's benefit. In addition, it is obliged to remember that a specified sentence has been prescribed by law as the sentence that should be regarded as ordinarily appropriate in these circumstances. Deterrence and retribution often tend to steer the severity of the

¹⁹ The complainant was a soft target for the appellant.

²⁰ Section 73 (6) (b) (iv) of Act 111 of 1998 (the “Act”).

²¹ S v E T 2012 (2) SACR 478 (WCC).

²² The fact that the appellant was an awaiting trial prisoner does not automatically mean “time served”.

proposed sentence in a specific direction. Rehabilitation, on the other hand, tends to pull the proposed sentence in yet another direction.²³

[24] In our view, focusing on rehabilitation, in this case, would lead to an unfair and inappropriate sentence, which would be disproportionate to that deserved by the appellant for the crime for which he stands convicted.²⁴

[25] This crime has a strong component of gender-based violence, which has regrettably reached pandemic proportions in our country. We believe an unambiguous message must be sent to offenders participating in this type of criminal activity. That this crime was committed against an thirteen-year-old child requires that in considering the issue of a sentence, the court must consider the provisions of section 28 of the Constitution, namely the right of every child under section 28(1)(d), to be protected from maltreatment, neglect, abuse or degradation, a right which the appellant egregiously infringed in this case.²⁵

[26] In our view, the court of first instance gave sufficient weight to the appellant's personal circumstances and the issue of his possible rehabilitation. Thus, the lower court did not err in imposing the sentence of life imprisonment on the appellant.²⁶

[27] Finally, the imposition of a life sentence upon the appellant was not unjust and disproportionate, considering the circumstances surrounding the commission of the offence. As alluded to, focusing on rehabilitation would lead to an unfair and disproportionate sentence, which would be inappropriate for the crime for which the appellant was convicted. Significantly, the appellant had a previous conviction for a similar sexual offence for the rape of a minor.²⁷

[28] Although this offence occurred a long time ago, it did not appear to act as a deterrent to this type of criminal conduct. Thus, the imposition of a life sentence upon the appellant was not unjust and disproportionate, considering the circumstances surrounding the commission of the offence.²⁸

ORDER

²³ The prior conviction and sentence for rape did not seem to act as a deterrent.

²⁴ We say this also as the appellant showed no genuine remorse.

²⁵ S v Myburgh 2007 (1) SACR 11 (W), at page 15 at h.

²⁶ This issue was considered thoroughly by the judicial officer in the court of first instance.

²⁷ This cannot be ignored and weighed heavily with us.

²⁸ No misdirection by the judicial officer in the lower court was identified.

[29] In conclusion, an order is issued in the following terms, namely that:

1. The automatic appeal of the sentence of life imprisonment is dismissed.
2. The sentence of life imprisonment is confirmed.

WILLE, J

I agree.

COOPER, AJ