



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT**

Case number: **CC 12/2025**

In the matter between: -

THE STATE

and

LWANDO SIFISO PHIKE

Accused

JUDGMENT ON SENTENCE

NONCEMBU J

[1] The accused, following upon his guilty plea tendered in terms of section 112(2) of the Criminal Procedure Act¹, was convicted of 8 counts of rape, 1 count of attempted rape, and 4 counts of robbery with aggravating circumstances. The offences were committed over a period of 5 years, spanning from 2017 to 2022, involving no less than 9 victims who were women and young girls. Five of the rape convictions carry the minimum sentence of life imprisonment by virtue of the fact that the complainants were below the age of 18 years when the offences were committed. The robbery convictions carry the minimum sentence of 15 years each, as the victims were threatened with a knife during the said robberies.

2] It follows thus that in respect of the latter-mentioned convictions, this court does not have unfettered discretion to impose any sentences it deems meet. The prescribed sentences can only be departed from if substantial and compelling circumstances justifying such a departure are found to exist.

[3] This was aptly stated as follows by the Supreme Court of Appeal (SCA) in *S v Matyityi*², affirming its earlier decision in the *locus classicus* case of *S v Malgas*³.

‘As *Malgas* makes plain, courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and, like other arms of state, owe their fealty to it. Our constitutional order can hardly survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domains of power of the other arms of State. Here Parliament has spoken. It has ordained minimum sentences for certain specified offences. Courts are obliged to

¹ Criminal Procedure Act 51 of 1977.

² *S v Matyityi* 2011 (1) SACR 40 (SCA), para 23.

³ *S v Malgas* 2001 (1) SACR 469 (SCA).

impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as “relative youthfulness” or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer’s personal notion of fairness.’

[4] The sentencing court, therefore, must engage in an active exercise to establish whether or not substantial and compelling circumstances exist justifying a deviation from the prescribed minimum sentences. Absent such circumstances, the court is obliged to impose the prescribed minimum sentences.

[5] In undertaking the above-mentioned exercise, the court must take cognizance of the objectives of sentencing, which entail four primary elements: deterrence, prevention, retribution, and rehabilitation. At the same time, being mindful that these will not necessarily apply equally in every case, as the circumstances of each case will determine which objective must be prioritised. By way of an example, when sentencing youthful offenders, the primary objective to come to the fore would be rehabilitation, whilst retribution and deterrence will often be the primary objectives to be prioritised in sentencing those who commit serious and violent crimes.

[6] Closely linked to the sentencing objectives is a balancing act that a court must undertake. This requires that a sentencing court take into account competing interests, ie, the personal circumstances of the offender, the gravity of the offence

committed, and the interests of society, colloquially known as the *Zinn* triad.⁴ A fourth consideration that has been adopted in this regard pertains to the rights of the victims. This is in line with the Service Charter for Victims,⁵ which calls for a just penal policy that is victim-centred.⁶

[7] I now turn to deal with the personal circumstances of the accused. These were placed on record by his counsel and gleaned from the pre-sentence report submitted, as the accused elected not to testify in this regard. They can be summarised as follows: the accused was born on 1 February 1992, which makes him 33 years old presently. He grew up in a stable home environment with a mother and father, with him being the eldest of 6 siblings. He is single, with a 13-year-old child who lives with his mother. Before his incarceration, he was doing odd jobs, which used to enable him to support his child.

[8] He was using and was addicted to drugs, which he claims contributed to the commission of these offences. He has no previous convictions, but he is currently serving sentences for similar offences.

[9] The gravity of the offences committed by the accused cannot be overemphasised. Rape, by its nature, is a very serious offence. It is a

⁴ *S v Zinn* 1969 (2) SA 537 at 540 G.

⁵ Adopted by South Africa in 2007.

⁶ See *S v Matyityi* 2011 (1) SACR 40 (SCA).

dehumanising, degrading, and brutal violation of a person's privacy, dignity, and bodily integrity. In *S v MM*⁷ the SCA stated this as follows:

‘...rape is undeniably a degrading, humiliating and brutal invasion of a person's most intimate, private space. The very act itself, even absent any accompanying violent assault inflicted by the perpetrator, is a violent and traumatic infringement of a person's fundamental right to be free from all forms of violence and not to be treated in a cruel, inhumane or degrading way.’

[10] In *S v Chapman*⁸ the SCA stated that rape ‘strikes at the very core of human dignity and the integrity of every person’. It is an act of extreme power and dominance, stripping the victim of autonomy and security.

[11] In the present matter, harm was compounded by repetition and multiplicity. The accused committed a series of rapes, targeting not one victim, but several young girls and women under the threat of a knife. Those who had valuables with them had their valuables forcibly taken by the accused. This continued for a period of 5 years, probably only stopped because the accused got arrested.

[12] The pattern of the offences shows that he preyed on young girls and women who could not protect themselves. The ages of the victims range between 14 and 23 years old. The accused imposed himself as a predator on those least able to resist, the most vulnerable of our society. This does not present a single lapse of judgment, but a pattern of predatory behaviour. Even from his plea statement, it is also clear to see that these were not impulsive or opportunistic acts. They were

⁷ *S v M M* 2013 (2) SACR 292 SCA para 17.

⁸ *S v Chapman* 1997 (2) SACR 3 (SCA).

carried out systematically, with him deliberately seeking out vulnerable victims. The accused is a classical serial rapist.

[13] The victim impact reports submitted on behalf of the complainants bear testimony to the psychological devastation suffered by the victims as a result of the offences committed by the accused. Some of the victims did not even want to talk about the incidents, for fear of having to re-live the ordeal they went through. Some have become withdrawn, blaming themselves and experiencing feelings of shame over what happened. Others had their schooling affected to the point of having to repeat certain grades. One victim has resorted to alcohol abuse as a coping mechanism, whilst one is suffering from post-traumatic stress.

[14] It also did not help matters that it took so long for their matters to be finalised. The first of these offences was committed in 2017; the victims, who were children then, are now adults, hence the unwillingness of some to cooperate with the social workers in the compilation of the reports for court. They had lost faith in the criminal justice system. Unfortunately, the psychological effects of these offences often outlast any physical injuries one might have suffered.

[15] Society not only requires effective punishment of those committing serious crimes, they deserve protection from the likes of the accused. Our country faces an epidemic of sexual violence, with rape becoming the national scourge. Courts are the last port of hope for members of society, especially women and girls who, every day, find themselves becoming helpless prey to these predators. The only

way that courts can protect them is by ensuring that they prioritise retribution and prevention when sentencing those convicted of these atrocities. In the case of serial rapists like the accused, this entails that they be removed from society. This, in turn, will ensure that the rule of law is maintained, members of society are protected so that they do not resort to self-help.

[16] The remaining question to be answered is whether it can be said that substantial and compelling circumstances exist, justifying a deviation from the prescribed minimum sentences in this matter.

[17] In my view, there can be no question that the personal circumstances of the accused pale into insignificance in comparison to the offences he committed, the interests of society, and the victims of his crimes in this matter. If anything, as clearly indicated in his pre-sentence report, he had a normal childhood in a stable home environment with a supportive family. He has no ailments, and he is not the primary caregiver of his minor child.

[18] It was argued by his counsel that his use of drugs, which contributed to the commission of these offences, and the fact that he pleaded guilty, thus showing remorse and saving the victims the ordeal of having to re-live their experiences through testifying in court, must be considered as constituting substantial and compelling circumstances.

[19] On the aspect of genuine contrition, the SCA has made it very clear in *S v Matyityi*,⁹ that one needs to take the court into confidence as to why they committed the offences in question in the first place, and why the sudden change of heart in them now being remorseful. This is because one can be motivated by a number of reasons to plead guilty. The accused in this matter has failed to take this court into his confidence. Something I do not find surprising, given that, as stated above, this was not a momentary lapse of judgment, but a series of offences, carefully planned to target a particular group of society.

[20] Evidently, the state's case was overwhelmingly strong against the accused in this matter, as he was linked through DNA evidence in all the offences. This is also implicit in the long delay in the finalisation of the matters, because it was only once he was connected via the DNA that his prosecution could be commenced. He did not voluntarily come forward to admit his guilt, as one would expect of one who is remorseful for his actions. Some of the victims, as reflected in their reports, had given up on ever getting any justice in their matters. I therefore find his alleged remorse to be contrived and opportunistic.

[21] Concerning his drug addiction and its effect on the commission of these offences, I find the following passages from his pre-sentence report apposite:

‘10.3 The accused is said to be a drug addict that is not ready to be rehabilitated. He has demonstrated a pervasive, violent, aggressive, non-remedial behaviour judging from the types of crimes he committed. There is no evidence that suggests that his behaviour was learned at his home and no history of peer pressure from people that are older than him.

⁹ Op cit n6.

10.4 Victim's lives have been changed drastically; he destroyed their dreams with others turned to be drunkards. Some victims developed trust issues, and some had their studies interrupted. They are left with deep emotional scars, anger issues and suffering from post-traumatic stress disorder. Their right to freedom of movement is infringed as they developed fear around men.'

[22] What I take from the above and the report as a whole is that the accused did not come from a background which drove him to resort to drug use. He made a deliberate choice to use drugs, well-knowing its consequences. He is not an**candidate** for rehabilitation. Furthermore, I find it quite perplexing that the accused did not commit random crimes, as one would expect from one who acts impulsively due to the influence of drugs, or commit crimes intended to support his drug addiction, as is often the case in some instances.

[23] As stated above, his crimes were carefully planned, systematic, and targeted a certain group of people who were in vulnerable positions. That to me depicts somebody who knew exactly what he was doing, as opposed to one who acts because they are under the influence of a substance. This is also manifest in the fact that even his plea statement is quite detailed on how the offences were committed, something which one does not often get from one who was acting while under the influence of a substance.

[24] I therefore cannot find these factors constitute substantial and compelling circumstances or that and substantial and compelling circumstances justifying a deviation from the prescribed sentences exist on the facts of the present matter.

[25] Section 10 of the Constitution guarantees everyone the right to dignity. Section 12 (1) (c) protects the right to freedom and security of the person, including the right to be free from all forms of violence. Rape is a direct and deliberate violation of these rights. Sentencing must give expression to constitutional values by reaffirming that the dignity of women is not negotiable and must be protected through the severest sanction available. The accused is a serious danger to society who needs to be removed from society. Given all these factors, I find that the prescribed minimum sentences, are just sentences proportionate to the offences committed by the accused, the accused himself, and the interests of society.

[26] In the result, therefore, the accused is sentenced as follows:

- (a) Counts 1, 3, 7, 12 and 13: Life imprisonment in respect of each count.**
- (b) Counts 4, 6, 8, 11: 15 years imprisonment in respect of each count.**
- (c) Counts 2, 5, 10: 10 years imprisonment in respect of each count.**
- (d) Count 9: 5 years imprisonment**

The sentences in respect of counts 2, 4, 5, 6, 8, 9 and 10 shall run concurrently with the sentence in respect of count 1.

[27] The following ancillary orders shall issue:

- a) No otherwise order is made in terms of section 103 (1) of the Firearms Control Act (Act 60 of 2000) (accused is deemed unfit to possess a firearm).
- b) The accused's name must be included in the National Register for sexual offenders in terms of section 50 of the criminal Law (Sexual offences and Related Matters) Amendment Act 32 of 2007.
- c) In terms of Section 120 of the Children's Act no 38 of 2005, the accused is deemed unsuitable to work with children.
- d) In terms of section 299A of the Criminal Procedure Act (Act 51 of 1977), the victim's families are advised that they are entitled to make representations to the Parole Board or to attend any relevant meetings of the Parole Board where the placement of the accused on parole, day parole or correctional supervision is considered.

V. P. NONCEMBU
JUDGE OF THE HIGH COURT

APPEARANCES

FOR THE STATE : Adv Mtsila

FOR THE ACCUSED : Adv Giqwa

DATE HEARD: : 23 September 2025

DATE JUDGMENT DELIVERED : 25 September 2025