



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

06 NOVEMBER 2025

DATE

SIGNATURE

CASE NO.: A109/2025

In the matter between:-

PETROS MOREMA

Appellant

v

THE STATE

Respondent

Heard on: 27 October 2025

Delivered: 06 November 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 06 November 2025.

ORDER

It is ordered:-

1. The appeal is dismissed.

JUDGMENT

KOOVERJIE J (Matlapeng AJ concurring)

THE APPEAL

- [1] In this appeal the appellant, Mr Morema challenged his sentence. He was sentenced to life imprisonment for the rape of a minor child. The appellant claims

that his sentence should be reduced in light of the various mitigating factors presented. He submitted that substantial and compelling circumstances exist and further the sentence is disproportionate to the offence.

[2] The appellant argued that the trial court erred in sentencing him to life imprisonment. It had overemphasized the seriousness of the offence which the appellant committed as well as the interest of the society whilst his personal circumstances were underemphasized.

[3] The imposition of a life sentence is shockingly harsh and induces a sense of shock.

THE FACTS

[4] The appellant pleaded guilty and was sentenced to life imprisonment on the 17 October 2024. On 18 April 2024 the appellant summoned a 11 year old child (the complainant) to purchase a cigarette for him from a nearby shop. The child consented and on his return, he entered the appellant's home. The appellant gave him two apples, proceeded to undress him, inserted his penis into the child's anus and had sexual intercourse with the minor. The appellant pleaded guilty to the charge of rape.

[5] The J88 confirmed that there was anal penetration. A pre-sentence report was prepared as well as a Victim Impact Report. The appellant requested this court to consider mitigating factors presented, namely that:

5.1 he was 60 years old at the time and unmarried;

5.2 he is declared a first time sexual offender as a result of this offence;

- 5.3 he has one child and was self-employed as a hawker. His income was R1500.00 a month;
- 5.4 due to the offence committed he was assaulted by community members which resulted in a broken elbow;
- 5.5 he has one working eye, and he lost his other eye when he was robbed;
- 5.6 he was drunk during the commission of the offence;
- 5.7 he pleaded guilty and took responsibility for his actions;
- 5.8 he is remorseful.

TRIAL COURT'S FINDINGS

- [6] Trial court considered the pre-sentencing report and took into account the triad of factors, that is the nature, the prevalence and the seriousness of the offence as well as the interest of the community. The court expressed that:

"Every day we have one or two intermediary matters where a child or children has been raped. This has become a cancer in our society and needs to be eradicated. It needs to be fought and resisted with tooth and nail".

- [7] The trial court in considering the victim impact report noted the following:

"Victim Impact Report states that this child is severely traumatized. He was crying all the way from your home to his grandmother, from the grandmother to

the clinic, to the police and he was not only traumatized psychologically, but he was physically injured. He could not walk properly.

His grandmother did not have the money to take the taxi to the police and that is why they had to walk all the way. There were faeces, correction blood in his faeces, and blood in his urine. The poor boy could not sleep at night, he would cry in his sleep. His school work took a turn for the worse. And that is the thing, perpetrators of the kind do not care about their victims' wellbeing, obviously they do not".

[8] It acknowledged that this incident would have a long-term consequence on the child, and that he will never be the same again. He is psychologically affected and this is seen from his behavior. He refuses to go outside, does not leave the home, no longer wants to play with his friends and refuses to go to the shops anymore.

[9] Consequently, the court pointed out that the prescribed minimum sentence for the offence is life imprisonment and there are no substantial and compelling circumstances after it considered the mitigating factors presented by the appellant.

[10] The court concluded that:

"When balancing the factors, that is your personal circumstances, and comparing that and considering the nature, as well as the seriousness of the offence, and also the interest of the community and the impact of the crime on the victim, the court is of the view that there is indeed no substantial and compelling circumstances before the court."

ANALYSIS

- [11] This court can only interfere with the sentence if the trial court had misdirected itself. A court hearing an appeal must be guided by the principle that punishment is pre-eminently a matter for the discretion of the trial court and the appeal court should be careful not to erode such discretion. The sentence should only be altered if the discretion has not been judicially or properly considered. The test ultimately is whether the sentence is vitiated like irregularity or misdirection or is disturbingly inappropriate¹.
- [12] The Criminal Procedure Act² demands the imposition of prescribed sentences unless the court is satisfied that there are substantive and compelling circumstances that justify the imposition of a lesser sentence. In this instance the appellant argued that not only did the court *a quo* not take into consideration the mitigating factors but failed to appreciate that their sentence is disproportionate.
- [13] Harms J in **Malgas**³ cautioned that courts are required to approach the imposition of sentence consciously. Although 51 of the Criminal Procedure Act of 1977 (CPA) limits the court discretion in respect of imposing sentences for offences where the minimum sentence is prescribed, courts are required not to pay lip service thereto but apply their minds to both the aggravating and mitigating factors.

¹ S v Rabie 1975 (4) SA 855 (A)

² The Criminal Procedure Act 51 of 1977

³ Henry Malgas v The State 2001 (1) SACR 469 SCA paragraph 24

[14] He aptly summarized the manner in which courts should approach sentencing accused when minimum sentences are prescribed. He expressed:

[25] *What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the legislature's view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed. In summary -*

- A *Section 51 has limited but not eliminated the courts' discretion in imposing sentence in respect of offences referred to in Part 1 of Schedule 2 (or imprisonment for other specified periods for offences listed in other parts of Schedule 2).*
- B *Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.*
- C *Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.*
- D *The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.*
- E *The legislature has however deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored.*

- F All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process.
- G The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ("substantial and compelling") and must be such as cumulatively justify a departure from the standardised response that the legislature has ordained.
- H In applying the statutory provisions, it is inappropriately constricting to use the concepts developed in dealing with appeals against sentence as the sole criterion.
- I If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.⁴
- J In so doing, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the bench mark which the legislature has provided.

[15] The court in **Malgas** further acknowledged that the seriousness of the offence and the prevalence thereof can outweigh the personal circumstances of the appellant⁵. Moreover the age of the accused cannot be a bar to sentence prescribed and imposed.⁶

[16] Ultimately all the factors, both mitigating and aggravating, must be considered by a sentencing court. The personal circumstances of the accused can in certain

⁴ My underlining

⁵ Malgas at paragraph 25

⁶ S v Seedat 2027 1 SACR 141 SCA at paragraph 41

instances constitute substantial and compelling circumstances. Reference was made to the matter of **S v Sikhapha**⁷ where counsel for the appellant motivated that a reduction of the sentence is appropriate. In the said matter in similar circumstances a 13-year-old girl was raped. The court found that the mitigating factors were not flimsy, thereby reducing the life imprisonment sentence to 13 years. The court remarked that the minor child did not have physical injuries and there was no evidence prescribed regarding her psychological status after the rape.

[17] In my view, the facts of this matter are however distinguishable. The trial court in weighing the factors: the appellants personal circumstances, the nature and seriousness of the offence, the interest of the community and the impact of the crime, found no substantial and compelling circumstances. In particular the court remarked not only is the crime of rape on young children prevalent but that the minor was helpless and vulnerable as he trusted the appellant and respected him. The appellant took advantage of this vulnerability. This act of violence and intrusion has left the child psychologically affected. The trial court emphasized that he will never be the same again.

[18] I find that all the relevant information was considered by the trial court, which included the victim accident report as well as the pre-sentencing report, hence there was no misdirection by the court. I reiterate that the discretion to impose sentences is the trial court's function and the appeal court can only alter the sentence if the sentence is vitiated by irregular misdirection or is distinguishably inappropriate.

⁷ 2006 (2) SA 439 SCA

[19] In these circumstances, the trial court had applied its mind and there is no reason for the appeal court to interfere with the sentence imposed.

[20] In the premises the appeal is dismissed.


H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree,


S MATLAPENG
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the appellant: *Mr Kgagara*

Instructed by: *Mr Morema*

Counsel for the respondent: *Adv. Sivhidzho*

Instructed by: *National Director of Public Prosecutions*

Date heard: *27 October 2025*

Date of Judgment: *06 November 2025*