



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

CASE NO: CC22/2024

Delete whichever is not applicable	
(1) Reportable: No.	
(2) Of interest to other judges: No	
(3) Revised.	
03 November 2025	
Date	Signature

In the matter between:

THE STATE

and

**ANSWER BONGANI CHAUKE
TITUS TSHEPANG BILANKULU**

**ACCUSED 1
ACCUSED 2**

JUDGMENT ON SENTENCE

Munzhelele J

- [1] Accused were convicted of the following offenses: Murder read with the provisions of section 51(1) of schedule 2, Part I of act 105 of 1997 and Robbery with aggravating circumstances as contemplated in section 1 of the Criminal Procedure Act 51 of 1977, read with section 51(2) and Schedule 2, Part II of Act 105 of 1997.
- [2] The accused, in this sentence trial, did not testify or call any witnesses, but defense counsel presented the accused's personal circumstances through the pre-sentence reports which were prepared by the social workers, and they presented same under oath. On behalf of accused 1 a pre-sentence report was compiled by Nkhensani Eunice Nkuna a private social worker, working under Rhulani Bopape as a supervisor. Accused 2's pre-sentence report was compiled by Thokozani Mbatha who is employed by the Department of Social Development and supervised by E. Bosch. The pre-sentence report includes a recommendation by the probation officer that the accused be sentenced to imprisonment for the offenses for which he was convicted. The State also did not call any witnesses but submitted the victim impact statements of Tlalane Charlotte Mabutho, the mother of the deceased.
- [3] Section 274 of the *Criminal Procedure Act* 51 of 1977 requires the trial court to obtain sufficient information to enable it to impose an appropriate and just sentence. The purpose is to ensure that the presiding officer is properly informed of the relevant personal circumstances of the accused, the interests of society, the impact of the offence on the victims, and any other factors that may assist the court in arriving at a just balanced sentence. This safeguard also ensures that the court does not impose a sentence in anger or by considering only the merits of the case. Judicial officers are enjoined to approach sentencing with a humane and compassionate understanding of human frailties. In *S v Rabie* 1975 (4) SA 855 (A) at 866, Corbett JA (as he then was) remarked:

“A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressure of society which contribute to criminality. It is in the context of this attitude of mind that I see mercy as an element in the determination of the appropriate punishment in the light of all the circumstances of the particular case.”

- [4] In *S v Samuels* 2011 (1) SACR 9 (SCA) at para 8, Ponnann JA cited with approval the following passage from *S v Siebert* 1998 (1) SACR 554 (SCA) at 558j–559a:

“Sentencing is a judicial function sui generis. It should not be governed by considerations based on notions akin to onus of proof. In this field of law, public interest requires the court to play a more active, inquisitorial role. The accused should not be sentenced unless and until all the facts and circumstances necessary for the responsible exercise of such discretion have been placed before the court.”

- [5] The personal circumstances of Accused 1 are as follows: He is 25 years old, single, unemployed, and has no dependents. His parents passed away when he was eight years old, leaving him and his two siblings in the foster care of their grandmother. The household survives on an old-age pension and foster grant, which are insufficient to meet their needs. Among the siblings, the accused is the only one in good health, as the other two suffer from chronic illnesses and one is disabled. The accused was not problematic in his youth and assisted in caring for both his siblings and his grandmother, who was already 82 years old at the time. He

dropped out of school in Grade 10 due to negative peer influences. Thereafter, he began smoking cigarettes and dagga, and experimenting with crystal meth, eventually using dagga daily. While incarcerated, he contracted tuberculosis, which is currently under control with treatment. He has no previous convictions. The accused expressed remorse, stating that he deeply regrets being part of the group that caused the death of the deceased. He has been in custody as an awaiting trial prisoner since his arrest in January 2023. The social worker recommended that he be sentenced to correctional supervision in terms of section 276(1)(h) of the *Criminal Procedure Act*.

- [6] The personal circumstances of Accused 2 are as follows: He is presently 21 years old, single, unemployed, and has no dependents. He passed Grade 8 and has no previous convictions. He is the youngest of three siblings; his parents passed away when he was two years old, and he has since been under the care of his grandmother. Although he had a decent upbringing, he began engaging in criminal activities at a young age. He is in good health. During his youth, he joined a group that abused alcohol, marijuana, and crystal meth, funding this lifestyle by robbing people. The accused expressed a willingness to participate in rehabilitation programs. The social worker recommended that he be sentenced to life imprisonment in terms of section 51(1) of Act 105 of 1997.

- [7] The victim impact statement of Ms Tlalane Charlotte Mabutho, made under oath, contains the following: She informed the court, in her affidavit, that her once positive outlook on life has changed due to the trauma of losing her child. She now feels physically and mentally drained, and less trusting of others. She suffers from back and hip pain resulting from a fall upon hearing of her child's death. The trauma was profound for her and the family. The deceased's grandmother had to be hospitalized following the loss of her grandson. Ms Mabutho further stated that

although the family of the accused indicated that they intended to visit the deceased's family to seek forgiveness, they have never done so and have shown no remorse to date. She continues to suffer from insomnia as she constantly thinks of her late son. Shortly after the incident, the family home was subjected to stone-throwing by members of the community.

- [8] The facts of this case are that the deceased, a college student, was stabbed in the neck and died because of the wound. He was also robbed of his cellphone during the attack by a group of five boys, all of whom were school dropouts.

- [9] Counsel for Accused 1 submitted that substantial and compelling circumstances exist which justify a deviation from the prescribed minimum sentence. She argued that these circumstances include the fact that the accused is a first offender, has no previous convictions, and has been in custody as an awaiting-trial prisoner for a period of two years.

Counsel further contended that, for purposes of sentencing, the counts should be treated as one to prevent a manifest injustice. She submitted that substantial and compelling circumstances need not be exceptional, and that the personal circumstances of the accused may, in appropriate cases, suffice to qualify as such.

She further argued that the imposition of minimum sentences has not yielded the desired deterrent effect, as the incidence of serious offences such as murder continues to rise despite their enforcement. Accordingly, she urged the Court to exercise its sentencing discretion and to impose a sentence that is just and proportionate, rather than one dictated solely by statutory prescription.

Counsel acknowledged that the personal circumstances of an accused ordinarily recede into the background in the face of serious offences but emphasized that punishment which is excessive or disproportionate serves neither the interests of

justice nor those of society. In her submission, a sentence of life imprisonment would be inappropriate in the circumstances of this case.

She emphasized rehabilitation as an important sentencing consideration, particularly given the relative youth of the accused, and proposed that a sentence of fifteen (15) years' imprisonment would be fair and appropriate. Counsel also submitted that, should the Court impose sentences on multiple counts, such sentences ought to run concurrently.

- [10] The State, on the other hand, submitted that several aggravating circumstances must be taken into account in determining an appropriate sentence. It was argued that the accused has not shown genuine remorse, and that their expressions of regret do not amount to true contrition. The State criticized the social worker's pre-sentence report as being of limited assistance, arguing that it failed to engage with the implications of the minimum sentencing regime.

The prosecution maintained that the prescribed minimum sentence of life imprisonment is justified in this case, given the seriousness of the offence and the circumstances under which it was committed. The State argued that rehabilitation is misplaced as a dominant sentencing consideration where the accused has not acknowledged guilt or demonstrated insight into their conduct.

It was submitted that the primary sentencing objectives in this case should be deterrence and prevention, given that the offence involved the loss of a human life over a cellular phone. The State argued that such conduct reflects a callous disregard for human life and warrants a severe custodial sentence.

Accordingly, the State urged the Court to impose the prescribed minimum sentence of life imprisonment and to further declare the accused unfit to possess a firearm in terms of the *Firearms Control Act 60 of 2000*.

- [11] Counsel for Accused 2 conceded that the offences for which the accused has been convicted are serious in nature. However, she submitted that the imposition of the prescribed minimum sentence would be inappropriate, as there exist substantial and compelling circumstances justifying deviation therefrom.

She relied on the following mitigating factors: the accused's youthfulness, the fact that he has been in custody for more than two years, his status as a first offender, and his past exposure to drug addiction at the time of the offence. Counsel contended that these factors, considered cumulatively, warrant a departure from the prescribed sentence.

She further submitted that the accused demonstrates potential for rehabilitation, and should therefore be regarded as a suitable candidate for reform rather than permanent incarceration

Analysis

1. The Legal Framework

- [12] The court is required to balance the personal circumstances of the accused with the interests of the victims and society. It must then determine whether substantial and compelling circumstances exist to justify a departure from the prescribed minimum sentences for murder and robbery with aggravating circumstances, as contemplated in section 51(1) and (2) of the *Criminal Law Amendment Act* 105 of 1997.

In *S v Malgas* 2001 (1) SACR 469 (SCA), the court held that the prescribed minimum sentences must be imposed unless substantial and compelling circumstances justify a lesser sentence. This framework was designed to ensure that serious offences are punished with the severity they warrant, while still

allowing for judicial discretion in appropriate cases. The legislature has prescribed life imprisonment (or other specific terms) as the norm for such crimes, and only genuinely compelling reasons will justify deviation.

In *S v Kruger* 2012 (1) SACR 369 (SCA), Shongwe JA (with Harms AP and Plasket AJA concurring) confirmed that punishment must not be equated with revenge, but must incorporate all purposes of sentencing—namely, prevention, retribution, individual and general deterrence, and rehabilitation.

Section 51(1) and (2) of the Criminal Law Amendment Act 105 of 1997 prescribes life imprisonment for murder (where aggravating circumstances are present) and not less than 15 years for robbery with aggravating circumstances, unless the court finds that “substantial and compelling circumstances” justify the imposition of a lesser sentence.

The Supreme Court of Appeal in *S v Malgas* 2001 (1) SACR 469 (SCA) laid down the authoritative test at para 8, p. 474h–i Marais JA explained the purpose of the Act:

“What the Legislature has achieved is to ensure that in the absence of weighty justification, the sentences for the listed crimes should not be lighter than those prescribed.”

At para 25, p. 481a–c the Court set out the test for departure:

“Courts are required to approach the imposition of sentence conscious of the fact that the Legislature has ordained life imprisonment or the particular prescribed period of imprisonment as the sentence which should ordinarily and in the absence of weighty justification be imposed for the listed crimes... Unless there are and can be seen to be truly convincing reasons for a different response, the crimes in

question are required to elicit a severe, standardized and consistent response from the courts.”

Thus, substantial and compelling circumstances must be exceptional enough to justify a lesser sentence.

The Constitutional Court endorsed this approach in *S v Dodo* 2001 (3) SA 382 (CC): Para 40, p. 401F–H:

“What the section does, is to limit the courts’ discretion in imposing sentences for the more serious crimes and compel them to impose life imprisonment in the absence of substantial and compelling circumstances... This is not inconsistent with judicial independence provided that it does not prevent the courts from imposing a lesser sentence where justice demands.”

Application to the Facts of Accused 1

- He is a first offender, aged 25.
- Orphaned at 8, raised by his elderly grandmother.
- Sole healthy sibling in a family where his two siblings are chronically ill/disabled.
- Dropped out of school at Grade 10 due to peer influence.
- History of substance abuse (dagga, crystal meth).
- Contracted tuberculosis in prison, currently under treatment.
- Has expressed remorse for his role.
- Has been an awaiting-trial prisoner for over 2 years.

The question is whether these collectively amount to substantial and compelling circumstances. In *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 58, p. 574c–d:

“It is clear from the decisions of this Court since *Malgas* that it is not enough to conclude that the prescribed sentence is too severe in the circumstances of the case. Something more is required. The circumstances must be such as to render the

prescribed sentence unjust—meaning disproportionate to the crime, the criminal and the legitimate needs of society.”

Here, although Accused 1’s personal hardships are compelling, they must be measured against the brutality of the offence (stabbing in the neck, robbery in a gang). In *S v PB* 2013 (2) SACR 533 (SCA) at para 20, p. 540a–b:

“Personal circumstances of an accused, although relevant, will necessarily recede into the background when set against the gravity of the offence, the interest of society and the legitimate aim of deterrence.”

Thus, while the accused’s youth, first-offender status, and social background are mitigating, they cannot on their own justify deviation in the face of such serious violent crime.

Application to the Facts of Accused 2

- He is 21 years old.
- Lost his parents at 2 years old, raised by grandmother.
- Dropped out at Grade 8.
- History of criminal activity from a young age (robbery, substance abuse).
- No previous convictions.
- Willingness to undergo rehabilitation.

The social worker recommended life imprisonment under section 51(1). His circumstances are less mitigating. His early criminal activity and admitted involvement in robberies diminish prospects of deviation.

Conclusion

Based on the authorities, the court finds that Accused 1’s circumstances—first offender, orphaned, hardship in upbringing, medical condition, genuine remorse, and prolonged pre-trial incarceration standard. In *Malgas, Vilakazi, PB* cautions that deviation should not be routine, and must be based on “truly convincing reasons.”

Given the seriousness of the offence (murder by stabbing and robbery by a gang), the court finds that these factors, while mitigating, do not outweigh the gravity of the crime and societal interests.

For Accused 2, the prospects of deviation are weaker, as his history of criminal conduct as mentioned by the social worker on the report and the aggravating features of the crime weigh heavily against him.

[13] Accordingly, the following sentence is deemed appropriate.

1. The accused on count 1 are sentenced to life imprisonment each.
2. On count 2 the accused are sentenced to 15 years imprisonment each.
3. In terms of section 280 of the Criminal Procedure Act, the sentences will run concurrently.

Ancillary orders

1. In terms of Section 103 (1) of Firearms Control Act 60 of 2000 the court makes no order. This means accused are deemed unfit to possess a firearm.
2. In terms of section 103 (4) of Firearms Controls Act 60 of 2000, the court makes an order for search and seizure of accused's premises for firearms, ammunitions licenses and or competency certificate.
3. In terms of section 299A (1) of Act 51 of 1977, the court informs the complainants that they have a right to make representations to the Commissioner of the Correctional Services when placement of the prisoner on parole is considered, to attend any relevant meetings of the parole board, when the accused's parole is to be decided. This is subject to the directive issued by the Commissioner of Correctional Services under section 4 of the Correctional Services Act.

4. Accused are having the right to appeal the conviction and sentences which were imposed on them today. You can request legal aid attorneys or an attorney where you pay out of your own pockets to assist you in bringing substantive applications for leave to appeal the conviction and sentences within 14 days of this sentence. If your applications are later than 14 days then you should apply for condonation, to be allowed an extension of time to file the applications for leave to appeal out of time.



M. MUNZHELELE

Judge of the High Court of South Africa

Gauteng Division, Pretoria

Heard: 03 November 2025

Delivered: 03 November 2025

Counsel for the State: Adv. Masilo

Counsel for Accused 1: Adv. Makwela

Counsel for Accused 2: Adv. B.M.T More