



**IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE DIVISION, CAPE TOWN]**

Case no.: CC 31/2020

In the matter between:

THE STATE

versus

M[...] M[...]

Coram: Francis J

Heard:

Delivered: 10 February 2026

SENTENCE

FRANCIS, J

[1] The accused, M[...] M[...], stands before this Court to be sentenced following his conviction on a single count of murder. The deceased was his three-year-old nephew, L[...] M[...], whose life was brutally ended by the accused striking him repeatedly on the head with bricks on or about 9 February 2019.

[2] Having considered the evidence presented at trial, the submissions of both the State and Defence Counsel, the comprehensive Pre-Sentence Report compiled by Probation Officer Mrs. J.J. Radloff, the oral evidence in mitigation proffered by the accused, and the applicable legal principles, I am now required to determine a just and appropriate sentence.

[3] The murder was not premeditated or planned as defined in Schedule 2, Part I of the Criminal Law Amendment Act 105 of 1997. Therefore, as a first-time offender convicted of murder, the applicable prescribed minimum sentence in terms of Section 51(2) of the Act is 15 years' imprisonment, unless substantial and compelling circumstances justify a lesser sentence.

[4] The enquiry thus turns on whether such substantial and compelling circumstances exist, requiring the Court to balance the crime, the offender, and the interests of society, as established in *S v Zinn* 1969 (2) SA 537 (A).

PERSONAL CIRCUMSTANCES AND NATURE OF THE OFFENCE

[5] In applying the classic triad of factors set out in *S v Zinn* – the crime, the offender, and the interests of society – I have had careful regard to the following, as detailed in the Pre-Sentence Report and the evidence:

The Offender:

[6] The accused is a 35-year-old first offender.

[7] He experienced a difficult childhood marked by his father's domestic violence and his mother's subsequent alcohol abuse.

[8] He assumed a significant, supportive role within his family, particularly towards his younger sister and her children, and was regarded as a father figure.

[9] He has a limited education (Grade 9) and an unstable employment history.

[10] He consumed alcohol socially but was not assessed as dependent.

[11] He has expressed remorse for his actions, having initially denied but later accepted responsibility. He testified that he was sorry for his actions which would continue to haunt him for the rest of his life and requested that his sincere apologies be conveyed to members of his family; none of whom were in court. True remorse requires an admission of guilt and an acceptance of responsibility. The genuineness of this remorse is a significant mitigating factor, though it must be weighed against the gravity of the deed.

[12] The accused has spent approximately seven years in custody awaiting trial and finalisation of this matter. This period of pre-trial incarceration is a relevant factor to be taken into account in the sentencing equation. Indeed, the accused's Counsel strongly argues that this lengthy period, which was not due to the accused's own actions, should carry significant weight.

B. The Crime:

[13] The offence is one of the utmost gravity. The victim was a defenceless three-year-old child.

[14] The manner of killing was brutal and callous: repeated blows to the head with a brick. This was an extremely violent act resulting in death by blunt force trauma, against which the child had no defence.

[15] There was a profound breach of trust. The accused was the child's uncle and was entrusted with his care at the time of the murder. This aggravating factor cannot be overstated.

[16] The accused's defence of non-pathological criminal incapacity was rejected. He pleaded having had a memory loss at the critical period but, as the expert panel correctly found, he had the capacity to appreciate wrongfulness. He did not plead voluntary intoxication which, in any event, is generally not a mitigating factor and does not reduce moral blameworthiness.

C. The Interests of Society:

[17] There is a compelling societal interest in the deterrence of violence against children.

[18] The community rightly expects the sentence to reflect its collective outrage and to serve as a denunciation of such acts.

[19] There is a need to protect the public, especially children, and to ensure that justice is seen to be done.

[20] The interests of society also encompass the potential for rehabilitation, where it does not conflict with the primary needs of retribution and deterrence.

EVALUATION: ARE THERE SUBSTANTIAL AND COMPELLING CIRCUMSTANCES?

[21] The mitigating factors – particularly the accused’s status as a first offender, his expression of remorse, his prior positive role within his family, and the lengthy period of pre-trial detention – are substantial. They paint a picture of a man whose life and character were, prior to this single catastrophic event, oriented towards supporting others. The defence cumulatively presents these factors – including the family's plea for a second chance – as compelling reasons for deviation.

[22] However, the test from *S v Malgas* [2001] 3 All SA 220 (A) requires these circumstances to be not only substantial but also *compelling*. To be compelling, they must ‘cry out’ for a lesser sentence and render the prescribed sentence ‘disproportionately’ severe. In this endeavour, I am also guided by the principle reiterated in *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 58, that even where weighty personal circumstances exist, they must be measured against the inexorable and paramount need to impose a sentence that reflects the seriousness of the crime.

[23] While I acknowledge the accused's personal hardships and that the mitigating factors - the accused's remorse and his prior positive character - are substantial, they are, in my view, not compelling. Ultimately, the scales of justice are irrevocably weighted by the sacredness of the life that was taken and the horrific manner of its taking. The prescribed minimum sentence reflects the constitutional value placed on the life of a child and the need for a severe penal response to its violation. The aggravating factors in this case are of the heaviest order. The murder of a child by a caregiver is a fundamental violation that strikes at the heart of societal values. The brutal killing of a child in a profound breach of trust represents a fundamental societal wrong. The Probation Officer's own analysis notes the crime's severity and community impact argue against a non-custodial outcome.

[24] On the other hand, the prolonged period of seven years pre-sentencing incarceration is both a substantial and compelling factor (see, *Brophy and Another v S* 2007 (2) SA 56 (W) at paras 16 -19). It was common cause that the lengthy period was due to no fault of the accused or the State. The accused was arrested on 9 February 2019, and the trial only commenced five years later in 2024. A significant period of the lapse in time was due to the COVID pandemic and its effect on the operations of the criminal justice system. Also, during the trial, the accused was referred to Valkenberg Mental Hospital for psychiatric

observation, and, due to the shortage of beds, it took more than a year before he could be assessed. It seems to me that if the accused's prolonged period of pre-sentencing incarceration is not taken into account, the sentence imposed would be disproportionate and unjust. There is, of course, no hard and fast rule as to the weight to be afforded to a period of pre-sentencing incarceration. Nor is there a precise formula to apply when determining the amount of time that is to be subtracted from the sentence (see, *Radebe and Another v S* 2013 (2) SACR 165 (SCA) paras 13-14).

[25] In the result, I find that the time spent in pre-sentencing incarceration should be taken into account as a factor that justifies a departure from the prescribed minimum sentence of 15 years' imprisonment. The sentence below, in my view, affirms the value of the child's life and serves as a necessary denunciation, while justly accounting for the significant period already spent in custody.

ORDER

1. The accused is sentenced to **9 (NINE) YEARS' IMPRISONMENT.**
2. In terms of section 103 (1) of the Firearms Control Act 60 of 2000, the accused is deemed unfit to possess a firearm.

FRANCIS, J

Judge of the High Court, Cape Town