

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION - MAHIKENG**

CASE NO: CA12/2025

RCA 04/2021

In the appeal of:

JABULANI NDABA

Appellant

and

THE STATE

Respondent

Coram: Titus AJ & Zwiegelaar AJ

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be 27 January 2026.

ORDER

1. The appeal against sentence is struck from the roll.

JUDGMENT

TITUS AJ

[1] This is an appeal against sentence only. The parties agreed to the disposal of the appeal on the papers as provided for by section 19 (a) of the Superior Courts Act¹.

[2] On 25 April 2022, the Appellant was convicted in the Regional Court for the Regional Division of North West, held at Mahikeng, on one count of rape of an adult female in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with sections 1, 56, 56A, 57, 58, 59, 60 and 61 thereof, and further read with sections 256 and 261 of the Criminal Procedure Act 51 of 1977 ("the CPA").

[3] The charge attracted the sentencing regime under section 51(1) and Part I of Schedule 2 to the Criminal Law Amendment Act 105 of 1997 ("Act 105").

¹ Act No. Act 10 of 2013.

[4] The trial court found that the Appellant unlawfully and intentionally committed an act of sexual penetration by inserting his penis into the complainant's vagina on or about 4 September 2016, without her consent, on more than one occasion, and that he inflicted grievous bodily harm upon her.

[5] Although the offence carried the possibility of life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997, the learned regional magistrate ultimately imposed a sentence of 20 years' imprisonment on 28 April 2022; having found substantial and compelling reasons to deviate from the prescribed minimum sentence. The Appellant was further declared unfit to possess a firearm in terms of section 103 of the Firearms Control Act 60 of 2000.

[6] On 2 May 2025, approximately three years after sentence, the Appellant noted an appeal to this Court against the sentence imposed. He did so by filing a notice of appeal directly in this Court, without first seeking or obtaining leave to appeal from the regional court as required by section 309B² of the CPA.

[7] Counsel for the Appellant submitted that the Appellant enjoys an automatic right of appeal in terms of section 309B of the CPA by virtue of the nature of the

²(1) (a) Subject to section 84 of the Child Justice Act, 2008 (Act 75 of 2008), any accused, other than a person referred to in the first proviso to section 309 (1) (a), who wishes to note an appeal against any conviction or against any resultant sentence or order of a lower court, must apply to that court for leave to appeal against that conviction, sentence or order. [Para. (a) substituted by s. 99 (1) of Act 75 of 2008 (wef 1 April 2010) and by s. 11 of Act 42 of 2013 (wef 1 April 2010).]

(b) An application referred to in paragraph (a) must be made -

(i) within 14 days after the passing of the sentence or order following on the conviction; or

(ii) within such extended period as the court may on application and for good cause shown, allow.

(2) (a) Any application in terms of subsection (1) must be heard by the magistrate whose conviction, sentence or order is the subject of the prospective appeal (hereinafter referred to as the trial magistrate) or, if the trial magistrate is not available, by any other magistrate of the court concerned, to whom it is assigned for hearing.

charge and the sentence imposed. This submission is misconceived. Section 309B regulates applications for leave to appeal; it does not confer an automatic right of appeal.

[8] Moreover, it appears that the Appellant proceeded on the erroneous assumption that the mere fact that he faced a charge attracting a potential sentence of life imprisonment entitled him to appeal as of right. The court *a quo*, however, did not impose life imprisonment, but instead, as indicated before, sentenced him to 20 years' imprisonment after finding substantial and compelling circumstances.

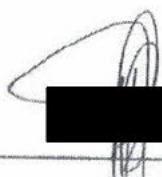
[9] In these circumstances, the Appellant does not enjoy an automatic right of appeal in terms of section 309(1)(a) of the CPA, which applies only where a sentence of life imprisonment has in fact been imposed.

[10] As the Appellant was required to seek leave to appeal from the trial court in terms of section 309B(1)(a), and having failed to do so, no competent appeal is before this Court. The absence of leave is a jurisdictional defect that cannot be cured, with the result that the purported appeal falls to be struck from the roll.

[11] In the result:

- (i) The appeal against sentence is struck from the roll.


RR TITUS


RR TITUS

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

I concur,


CJ ZWIEGELAAR

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

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Judgment Reserved: 13 June 2025

Judgment Handed Down: 27 January 2026