

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: CA105/2018

RC06/17

In the appeal of:

M. MOTHIBAKGWANA

Appellant

and

THE STATE

Respondent

Coram: Titus AJ & Zwegelaar 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 dismissed.
2. The sentence imposed by the court *a quo* on the Appellant is hereby confirmed.

JUDGMENT**TITUS AJ**

[1] This is an appeal against sentence only. On 22 November 2017, the Appellant was convicted in the Regional Court on one count of rape of a minor girl, aged 15 years, in contravention of Section 3, read with sections 1, 55, 56(1), 57, 58, 59, 60 and 61, of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007 read with sections 256, 257 and 281 of the Criminal Procedure Act 51 of 1977 ('the CPA'); further read with section 51 Schedule 2 of part III of the Criminal Law Amendment Act 105 of 1997 ('Act 105'), as amended as well as sections 92(2) and 94 of the CPA.

[2] The trial court found that, on or about 16 December 2015, the Appellant unlawfully and intentionally committed an act of sexual penetration of the complainant, a girl aged 15 at the time, by inserting his penis into her vagina, without her consent. The Appellant was sentenced to 22 years' imprisonment.

[3] The appeal lies with leave of the trial court. The parties agreed to the disposal of the appeal on the papers as provided for by section 19 (a) of the Superior Courts Act¹.

[4] The Appellant contends that the sentence imposed ‘...evokes a sense of shock...’ and further that it is ‘inappropriate’ in the light of his personal circumstances.

The Appropriate Sentence

[5] It is trite that sentencing falls pre-eminently within the discretion of the trial court². A court of appeal may only interfere where the sentencing court misdirected itself materially, or where the sentence is disturbingly inappropriate (*S v Malgas* 2001(1) SACR 469 (SCA); *S v Matyityi* 2011 (1) SACR 40 (SCA)). It is also trite that, in evaluating judicial discretion, an appeal court may not interfere with a sentence simply because it would have imposed a different sentence than that imposed by the trial court.

[6] If there is however a striking disparity between the sentence and that which the appeal court would have imposed had it been the trial court, then the trial court is at liberty to interfere with the trial court’s sentencing discretion³.

¹ Act No. Act 10 of 2013.

² *S v Rabie* 1975(4) SA855 (A)

³ *Director of Public Prosecution KZN v P* 2006 (1) SACR 243 SCA

[7] An appropriate sentence strikes a careful balance between the nature of the crime, the personal circumstances of the accused and the interests of society⁴.

[8] The offence falls within Part I of Schedule 2 to the Criminal Law Amendment Act 105 of 1997, which prescribes a minimum sentence of life imprisonment where the victim is under the age of 16, unless substantial and compelling circumstances exist.

[9] The trial court found such circumstances to be present and it accordingly deviated from the prescribed life sentence. It imposed a 22-year term of imprisonment, citing the gravity of the offence, the age and vulnerability of the complainant, and the breach of trust.

Grounds of Appeal

[10] The Appellant alleges that the term of imprisonment handed out to him evokes a sense of shock and that it is inappropriate in the circumstances of the case.

Evaluation

[11] The trial court correctly found that the appellant's personal circumstances, while not insignificant, did not outweigh the seriousness of the offence. The sentence imposed reflects a measured deviation from the prescribed life term.

⁴ S v Zinn 1969 (2) SA 537 (A)

[12] There is no misdirection on the part of the sentencing court. The sentence is not startlingly inappropriate, nor does it induce a sense of shock. It is firm but fair, and reflects the legitimate interests of society, the rights of the child victim, and the need for deterrence. After all, in *S v Jansen*⁵, the court recognized that the:

‘[r]ape of a child is an appalling and perverse abuse of male power. It strikes a blow at the very core of our claim to be a civilised society. . . . The community is entitled to demand that those who perform such perverse acts of terror be adequately punished and that the punishment reflect the societal censure. It is utterly terrifying that we live in a society where children cannot play in the streets in any safety; where children are unable to grow up in the kind of climate which they should be able to demand in any decent society, namely in freedom and without fear. In short, our children must be able to develop their lives in an atmosphere which behoves any society which aspires to be an open and democratic one based on freedom, dignity and equality, the very touchstones of our Constitution.’

[13] The Supreme Court of Appeals⁶ has also made it clear that sentences, for crimes such as that which the Appellant is convicted of, must send out a clear and consistent message that the onslaught of rape on children will not be countenanced in any democratic society which prides itself with values of respect for the dignity and life of others, especially our children; the most vulnerable in society. The

⁵ *S v Jansen* 1999 (2) SACR 368 (C) at 378G-379B.

⁶ *Maila v S* (429/2022) [2023] ZASCA 3 (23 January 2023) at para [60].

imprisonment of the Appellant should sufficiently rehabilitate him if he chooses to participate in the rehabilitation programs.

[14] The sentence imposed contributes meaningfully to restoring public confidence in the courts' ability to respond firmly to offences of this nature. It is evident that the Regional Magistrate, in exercising her sentencing discretion, duly considered all relevant factors necessary to arrive at an appropriate sanction. There is no indication of any misdirection in the exercise of her sentencing powers. The sentence handed down by the trial court serves the legitimate purposes of punishment, encompassing rehabilitative, deterrent, preventative, and retributive objectives.

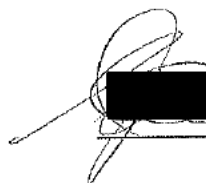
[24] In the result:

1. The appeal against sentence is dismissed.
2. The sentence imposed by the court *a quo* on the Appellant is hereby confirmed.



RR TITUS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

I concur,



CJ ZWIEGELAAR
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

APPEARANCES:

For Appellant: KM Mikansi
 Mafikeng Justice Centre
 MAHIKENG

For Respondent: Adv Kalakgosi
 NDPP
 MAHIKENG

Judgment Reserved: 04April 2025

Judgment Handed Down: 27 January 2026.