



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case Number: K/S 13A/24

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

THE STATE

and

ALBERTO LINDEN MATTHEWS

ACCUSED

Heard on : 4 February 2026

Delivered on : 5 February 2026

Coram : Olivier AJ

JUDGMENT – SENTENCE

OLIVIER AJ

1. On 20 November 2025, Mr. Alberto Linden Matthews was found guilty on the following charges:
 - 1.1 Contravening the provisions of section 3 read with the provisions of sections 1, 103, 117, 120(1)(a), 121 and schedule 4 of the Firearms Control Act and further read with the provisions of section 250 of the Criminal Procedure Act in that, on or about 27 and 28 December 2023 and at or near Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews was in unlawful possession of a 7,65mm caliber firearm for which he was not the holder of a license or permit issued to him in terms of the Firearms Control Act;
 - 1.2 Contravening the provisions of section 90 read with the provisions of sections 1, 103, 117, 120(1)(a) and 121 of the Firearms Control Act and further read with the provisions of section 250 of the Criminal Procedure Act in that, on or about 27 and 28 December 2023 and at or near Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews was in unlawful possession of ammunition for a 7,65mm caliber firearm for which he was not the holder of a license or permit;
 - 1.3 Contravening the provisions of section 4(1)(f)(iv) read with the provisions of sections 1, 103, 117, 120(1)(a) and 121 of the Firearms Control Act and further read with the provisions of section 250 of the Criminal Procedure Act in that, on or about 27 and 28 December 2023 and at or near Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews was in unlawful possession of a prohibited firearm, to wit a 7,65mm caliber firearm of which the serial number was obliterated;
 - 1.4 Contravening the provisions of section 17(1) read with the provisions of section 1 of the Domestic Violence Act, in that Mr. Matthews, contravened the provisions of a protection order that was issued against him on 28 November 2023 and that was served on him on

- 11 December 2023, in that he, on or about 27 December 2023 entered the residence at 1[...] M[...] Road, Belgravia, Beaconsfield;
- 1.5 Murder, in that on 27 December 2023 and at or near 1[...] M[...] Road, Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews unlawfully and intentionally killed M[...] A[...] B[...] (“the deceased”);
- 1.6 Contravening the provisions of section 120(6)(a) read with the provisions of section 1, 103, 117(3)(c), 120(1)(a), 121 and schedule 4 and 151 of the Firearms Control Act in that, on or about 27 December 2023 and at or near 1[...] M[...] Road, Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews unlawfully and intentionally pointed a firearm at W[...] B[...] without good reason to do so; and
- 1.7 Contravening the provisions of section 120(6)(a) read with the provisions of section 1, 103, 117(3)(c), 120(1)(a), 121 and schedule 4 and 151 of the Firearms Control Act in that, on or about 27 December 2023 and at or near 1[...] M[...] Road, Beaconsfield, Kimberley in the district of Frances Baard, the accused unlawfully and intentionally pointed a firearm at E[...] P[...] C[...] without good reason to do so.
2. Mr. Matthews initially pleaded not guilty on all of the charges put to him by the State and after hearing evidence and after having regards to the relevant exhibits in the matter, I found that the State managed to prove the guilt of Mr. Matthews on the above charges.
3. The State presented me with Mr. Matthews’ previous convictions¹ from which it appears that Mr. Matthews has one previous conviction for attempted murder for which he served a sentence of 4 years imprisonment.

¹ The SAP69 was handed up and accepted as Exhibit “X”.

Mr. Matthews' counsel indicated that Mr. Matthews apparently served only 8 (eight) months of the said sentence.

4. The said crime was committed on 20 March 2016 and he was convicted on 29 September 2016.

The previous conviction was acknowledged by Mr. Matthews.

5. Subsequent to Mr. Matthews' conviction, Mr. Maroke, who appeared for Mr. Matthews, requested an opportunity to obtain and present a pre-sentencing report and the matter was postponed for sentencing purposes to 4 and 5 February 2026.
6. At the commencement of the proceedings on 4 February 2026, Mr. Maroke did in fact present me with a pre-sentencing report that was handed up by agreement between the parties and was marked as **Exhibit "Y"**.

Mr. Matthews confirmed that he was satisfied with the contents of the report.

7. Ms. Pillay, for the State, presented the evidence of two witnesses prior to her argument to wit E[...] P[...] C[...] the daughter of the deceased and R[...] B[...] the sister of the deceased.

All of the above was taken into consideration for purposes of sentencing.

8. It is now incumbent on this Court to consider a proper sentence in this matter and the proper starting point in determining the appropriate sentence, is the so-called triad as set out in **S v Zinn**² namely to consider the circumstances relevant to the particular crime, the circumstances of the criminal involved and the interests of society and to then consider whether substantial and

² 1969 (2) SA 537 (A).

compelling circumstances exist that would warrant a deviation from the minimum sentences if and where applicable.

9. One extremely important aspect that is usually lost sight of is the fact that justice cuts both ways, in other words, just as much as the public expects of a court to mete out justice, justice must also be done in as far as an accused person is concerned.
10. Our Constitution in fact entrenches the right of every person to a fair trial³ and the right to a fair trial does not simply disappear once a person is found guilty of a crime, in other words even at the sentencing stage, a person who was found guilty is entitled to be treated with fairness.
11. I am fortified in my views by the Supreme Court of Appeal that, in **S v RO and Another**⁴, held as follows:

‘Sentencing is about achieving the right balance (or, in more high-flowing terms, proportionality). The elements at play are the crime, the offender and the interests of society, with different nuance, prevention, reformation and deterrence. Invariably there are overlaps that render the process unscientific, even a proper exercise of the judicial function allows reasonable people to arrive at different conclusions.’

12. It remains the duty of the court always to impose a sentence that is fair and just and that, in order to do so, the court should consider “...*all relevant factors and to find the appropriate balance between often competing factors that would lead to a fair and just sentence in all the circumstances of a particular case.*”⁵

³ See **Section 35(3)** of the Constitution of the Republic of South Africa, 1996.

⁴ 2010 (2) SACR 248 (SCA), par 30.

⁵ **S v Pitso** [2025] ZANHC 61(1August 2025), par 33.

13. The above is the simple and only reason why I ordered the matter to be postponed in order for the defence to obtain and present a pre-sentencing report.
14. The matter before me has attracted great public and media interest and I am mindful of the fact that the public and specifically the family of the deceased (and certainly also the family of Mr. Matthews) demand that justice be served.
15. Certain public utterances by family members of specifically the deceased can be described as extremely emotional and although one can certainly not blame them, the court must be careful to not let emotions cloud its judgment when it comes to considering an appropriate sentence.
16. The Supreme Court of Appeal has specifically warned against relying predominantly or exclusively on public opinion when an appropriate sentence is concerned where it was held as follows in **Gardener v S**⁶:

“True justice can only be meted out by one who is properly informed and objective. Members of the community, no matter how closely involved with the crime, the victim or the criminal will never possess either sufficient comprehension of or insight into what is relevant or the objectivity to analyse and reconcile them as fair sentencing requires. That is why public or private indignation can be no more than one factor in the equation...”⁷ (My omissions).

The same court has also held as follows:

‘... it is necessary to express a general note of caution. The object of sentencing is not to satisfy public opinion but to serve the public interest...A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It

⁶ [2011] ZASCA 24 (18 March 2011).

⁷ **Gardener**, supra, par 68.

remains the court's duty to impose fearlessly an appropriate and fair sentence, even if the sentence does not satisfy the public.⁸(My omissions).

I intend to do exactly this.

The Seriousness of the Offences:

17. I hold the view that it is stating the obvious to say that the possession of illegal firearms and ammunition, murder and pointing of firearms are in general serious offences and the rate at which murders in South African have been committed, has been described by the Supreme Court of Appeal as “*alarming*”⁹; a description with which I fully agree.

18. The fact that in the present matter specifically the crime of murder, the crime of a contravention of a protection order and at least one crime of pointing of a firearm has been committed in respect of a woman, holds specific significance in our modern-day society as government and society in general demands that any type of violence against woman should be eradicated.

19. I align myself with the learned Tlaetsi JP where he stated as follows in ***Smous v S***¹⁰ as follows:

‘Violence in our society, particularly by men against women is prevalent. The interests of society dictate that a strong message to the public that violence will not be tolerated should be sent...Respect for the law must be guaranteed. A sentence should be fair to the society, the offence, the offender and be blended with a measure of mercy.’¹¹(My omissions).

20. The seriousness of the murder charge on which Mr. Matthews was found guilty, is aggravated by the fact that he must have been in possession of the

⁸ ***Mhlakaza and Another v S*** [1997] 2 All SA 185 (A) at 189.

⁹ See ***S v Matyityi*** 2011 (1) SACR 40 (SCA), par 23.

¹⁰ [2017] ZANCHC 56 (15 September 2017).

¹¹ ***Smous***, *supra*, par 23.

illegal firearm and ammunition when he visited the property at 1[...] M[...] Road, Beaconsfield, Kimberley on that fateful day of 27 December 2023.

21. It is still uncertain as to what set Mr. Matthews off so that he decided to shoot the deceased, but the fact of the matter is that, if he was not in possession of the firearm and ammunition at the time, the deceased would not have been shot and killed.
22. Further to the above, it is clear from the evidence that, at some stage during the time that Mr. Matthews spent in the house, he must have formed the intention to shoot and kill the deceased which prompted him to walk into her bedroom, point a firearm at her, shot her twice and killed her – and all this in front of her 9-year-old daughter.
23. I am consequently of the view that Mr. Matthews, although he might have formed the intent to kill the deceased after entering the house (in other words an “*on-the-spot intent*”), definitely had the direct intention to kill the deceased.
24. I find very little mitigation in Mr. Matthews’ conduct, since he offered none and simply pleaded his innocence by putting up bare denials to facts put to him; in fact, Mr. Matthews’ continued conduct can only be described as defiant.
25. This is totally contradictory to the content of the pre-sentencing report that described Mr. Matthews as being remorseful and hoping to find forgiveness from the family of the deceased.

It must be said that I found Mr. Matthews’ conduct and demeanor in court anything but remorseful – quite the contrary.

26. The evidence suggests that the deceased was in fact defenceless since the evidence shows that the deceased was lying on her bed when Mr. Matthews entered the room shortly before he shot her.
27. Further to the above, it should be kept in mind that the deceased was shot by someone who was supposed to care for her and to protect her against harm and she was shot in her house, the one place that she was supposed to feel safe.
28. The effect of Mr. Matthews' conduct is that a family was left ripped apart and a minor female child now has to grow up without a mother at an age where a mother's guidance is becoming increasingly important and essential.
29. Suffice it to say that the evidence that was tendered shows a broken and disillusioned family that is deeply affected by the passing of the Deceased; a family that still struggles with financial and emotional issues.

It was stated in the pre-sentencing report under the heading "VICTIM STATEMENT" after the writer of the report consulted with Mrs. Booysen, the sister of the deceased:

'R[...] B[...] mentioned that E[...], daughter of the deceased, has been diagnosed with depression and Post Traumatic Stress Disorder. This happened as a result of the death of her mother. It is said that she has suicidal till this point. E[...] is on anti-depressants and is still consulting with a Psychologist. It was further stated that E[...] left her work as a result of the depression and PTSD.

The youngest daughter of the deceased, E[...], is mentioned to be very withdrawn since the incident. She always prefers to be on her own and does not easily speak about her mother. It was said that her school progress has dropped since the death of her mother. She has emotional outbursts at times. E[...] is receiving psychological help.'

The above was echoed by E[...] C[...] and R[...] B[...] during their uncontested evidence.

30. I am of the view that the fact that the deceased's murder might, on the evidence, not have been pre-meditated, does very little to distract from the fact that a heinous crime was committed.

31. This brings me to what will most probably be a contentious issue in respect of the murder charge and that is the question whether the murder of the deceased in this case falls under the provisions of **section 51(1)** of the Criminal Law Amendment Act¹² (*"the CLAA"*) or not.

32. **Section 51(1)** of the CLAA reads as follows:

'Notwithstanding any other law, but subject to subsections (3) and (6) a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.' (My omissions).

33. **Part I of Schedule 2** of the CLAA lists the offence of murder as one of the offences that carries a minimum sentence of life imprisonment and specifically where the death of the deceased resulted from physical abuse as defined in terms of the Domestic Violence Act by an accused who is or was in a domestic relationship with the deceased.¹³

34. **Section 51(2)** of the CLAA reads as follows:

'Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in—

¹² Act 105 of 1997.

¹³ See Part I, Schedule 2(g) of the CLAA.

- (a) Part II of Schedule 2, in the case of—
- (i) a first offender, to imprisonment for a period not less than 15 years;
 - (ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and
 - (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years”

35. **Part II of Schedule 2** of the CLAA lists the offence of murder under circumstances other than in Part 1.
36. Ms. Pillay argued that the conviction on the charge of murder carried a minimum sentence of life imprisonment and this argument, strangely enough, was not disputed by Mr. Maroke.

I disagree with the above for the reasons below.

37. In my judgment in respect of the verdict, I purposefully found Mr. Matthews guilty of murder without referring to the issue of whether **section 51(1)** or **section 51(2)** of the CLAA applies as I was always of the view that this should be dealt with during the sentencing stage of the matter.
38. My reasoning is simply that **sections 51(1)** and **51(2)** do not create two different crimes – there is still only one crime namely murder and Mr. Matthews knew, throughout the trial, that he was in fact facing a charge of murder.

Sections 51(1) and **51(2)** of the CLAA are simply sentencing regimes that apply based on the specific circumstances of the murder.

39. It goes without saying that the onus to show that this particular murder (of Mr. Matthews on the deceased) falls within the scope of **section 51(1)** of the CLAA, rested on the State and in this case, I hold the view that the State has failed to prove beyond reasonable doubt that Mr. Matthews pre-planned the murder of the deceased.
40. The principle is simple – if the State cannot prove it, the court cannot find it and in the present matter I am therefore of the view that, the murder of the deceased falls under **section 51(2)** of the CLAA and in view of the fact that Mr. Matthews is a second offender, carries a minimum sentence of 20 years imprisonment.

The Circumstances of the Accused:

41. Mr. Matthews is 46 years old, he is not married but has three children of which two are minors and he is currently unemployed.

Mr. Matthews was married to the deceased for approximately 3 years prior to the incident but they never had children of their own.

42. Prior to his arrest Mr. Matthews was gainfully employed, but he lost his employment as a result of his arrest.
43. Mr. Matthews has been in custody for approximately 2 years.
44. Mr. Matthews, as was already mentioned, has one previous conviction for attempted murder of a previous girlfriend and he pleaded not guilty on all charges levelled against him.

45. In **Vilakazi v S**¹⁴ the Supreme Court of Appeal stated that in instances of crimes of a serious nature, the personal circumstances of an offender will recede into the background.

The Court held as follows:

*'Once it becomes clear that the crime is deserving of a substantial term of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what the period should be...But they are nonetheless relevant in another respect. A material consideration is whether the accused can be expected to offend again. While that can never be confidently predicted his or her circumstances might assist in making at least some assessment.'*¹⁵

46. It was emphasised during argument by Mr. Maroke that, despite a comment in the pre-sentencing report to the contrary, Mr. Matthews is in fact remorseful and that he wishes to be forgiven by the family of the deceased.

47. In **S v Matyityi**¹⁶ the Court held as follows:

'In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed, what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions.'

48. Mr. Matthews did not testify on his own behalf during the sentencing proceedings and it is therefore difficult to determine whether he is genuinely

¹⁴ [2008] 4 All SA 396 (SCA).

¹⁵ **Vilakazi**, supra, par 58.

¹⁶ [2011] 2 All SA 424 (SCA), par 13.

remorseful and I have to agree with the Supreme Court of Appeal where it has held as follows:

‘His silence thus leads irresistibly to the conclusion that there was nothing to be said in his favour.’¹⁷

I have already commented on Mr. Matthews’ conduct in court and on the fact that I found it defiant and anything but remorseful.

The Interest of Society:

49. I have already referred to the issue of the interests of society herein above and I do not intend to rehash it all again.
50. I will however be remiss if I did not refer to the matter of **S v WV**¹⁸ where the Court emphasized the fact that the kind of sentence imposed will cause society to either have confidence in the judicial system or lose confidence in it.
51. I agree with this as it seems that the public in general and all too frequently, view the South African judicial system as a dog that is all bark and no bite whilst it is important that the public has confidence in the judicial system and in the sentences imposed by the Courts.

Substantial and Compelling Circumstances:

52. This brings me to the question whether substantial and compelling circumstances exist that would justify a deviation from the minimum sentence on specifically the murder charge but I wish to state it clearly that in dealing with this question and in focussing on the murder charge, I am in no way attempting to diminish the seriousness of the other crimes on which Mr. Matthews was found guilty.

¹⁷ **Matyityi**, supra, par 21.

¹⁸ 2013 (1) SACR 204 (GP).

53. In the often-quoted Supreme Court of Appeal case of **S v Malgas**¹⁹ it was held that a Court may impose a lesser sentence if the Court, upon due consideration of the particular circumstances of the case, is satisfied that the prescribed minimum sentence is rendered unjust in that it would be disproportionate to the crime, the criminal and the needs of society so much so that an injustice would be done by imposing the prescribed sentence.²⁰
54. It is however also true that the same Court held earlier in **Malgas** that the prescribed sentences should not be departed from lightly and for flimsy reasons which could not withstand scrutiny.²¹
55. I have already commented on the seriousness of the murder charge despite the fact that it might not have been pre-meditated and I hold the view that serious question marks should be placed over whether his previous conviction and sentence had any influence on the Mr. Matthews in respect of deterring him from committing another crime.
56. I have again considered Mr. Matthews' personal circumstances and I also took cognizance of the fact that Mr. Matthews has already spent 2 years in detention whilst this trial was ongoing, but I could not find anything that prompted me from holding that a deviation from the minimum prescribed sentence would be in order.
57. The flipside of the coin is however that the crimes committed by Mr. Matthews are serious and in fact heinous and the public demands a strong message to be sent to, not only Mr. Matthews, but also to all would be perpetrators that the judicial system will not tolerate the senseless, reckless and unjustified killing of another human being especially where that victim is a defenceless woman.

¹⁹ 2001 (1) SACR 469 (SCA).

²⁰ See **Malgas**, *supra*, par 25.

²¹ **Malgas**, *supra*, par 9.

58. I have to agree with the conclusion reached in the pre-sentencing report namely that nothing other but a sentence of imprisonment would do in these circumstances.

SENTENCE:

59. I will refer to the counts upon which Mr. Matthews is about to be sentenced, as they were put to him in the indictment.
60. After having considered all of the relevant circumstances and having taken all of the above into consideration, I sentence Mr. Alberto Linden Matthews as follows:

Count 2:

Contravening the provisions of section 3 read with the provisions of sections 1, 103, 117, 120(1)(a), 121 and schedule 4 of the Firearms Control Act and further read with the provisions of section 250 of the Criminal Procedure Act in that, on or about 27 and 28 December 2023 and at or near Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews was in unlawful possession of a 7,65mm caliber firearm for which he was not the holder of a license or permit issued to him in terms of the Firearms Control Act;

Count 3:

Contravening the provisions of section 90 read with the provisions of sections 1, 103, 117, 120(1)(a) and 121 of the Firearms Control Act and further read with the provisions of section 250 of the Criminal Procedure Act in that, on or about 27 and 28 December 2023 and at or near Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews was in unlawful possession of ammunition for a 7,65mm caliber firearm for which he was not the holder of a license or permit;

I take counts 2 and 3 together for purposes of sentencing and I sentence Mr. Matthews to 5 (five) years imprisonment.

Count 4:

Contravening the provisions of section 4(1)(f)(iv) read with the provisions of sections 1, 103, 117, 120(1)(a) and 121 of the Firearms Control Act and further read with the provisions of section 250 of the Criminal Procedure Act in that, on or about 27 and 28 December 2023 and at or near Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews was in unlawful possession of a prohibited firearm, to wit a 7,65mm caliber firearm of which the serial number was obliterated.

This charge is serious and I sentence Mr. Matthews to 10 (ten) years imprisonment.

Count 5:

Contravening the provisions of section 17(1) read with the provisions of section 1 of the Domestic Violence Act, in that Mr. Matthews, contravened the provisions of a protection order that was issued against him on 28 November 2023 and that was served on him on 11 December 2023, in that he, on or about 27 December 2023 entered the residence at 1[...] M[...] Road, Belgravia, Beaconsfield;

On this charge I sentence Mr. Matthews to 2 (two) years imprisonment.

Count 6:

Murder, in that on 27 December 2023 and at or near 1[...] M[...] Road, Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews unlawfully and intentionally killed M[...] A[...] B[...] ("the deceased");

I could find no reason to deviate from the prescribed minimum sentence as prescribed in section 51(2) read with Part II of Schedule 2 of the CLAA and I sentence Mr. Matthews to 20 (twenty) years imprisonment.

Count 7:

Contravening the provisions of section 120(6)(a) read with the provisions of section 1, 103, 117(3)(c), 120(1)(a), 121 and schedule 4 and 151 of the Firearms Control Act in that, on or about 27 December 2023 and at or near 1[...] M[...] Road, Beaconsfield, Kimberley in the district of Frances Baard, Mr. Matthews unlawfully and intentionally pointed a firearm at W[...] B[...] without good reason to do so; and

Count 8:

Contravening the provisions of section 120(6)(a) read with the provisions of section 1, 103, 117(3)(c), 120(1)(a), 121 and schedule 4 and 151 of the Firearms Control Act in that, on or about 27 December 2023 and at or near 1[...] M[...] Road, Beaconsfield, Kimberley in the district of Frances Baard, the accused unlawfully and intentionally pointed a firearm at E[...] P[...] C[...] without good reason to do so.

I take counts 7 and 8 together for purposes of sentencing and I sentence Mr. Matthews to 10 (ten) years imprisonment.

61. It is ordered that the sentences on counts 2, count 3, count 4, count 5 and counts 7 and 8 shall run concurrently and that the sentence on count 6 shall run separately from and consecutively to the sentences on counts 2, count 3, count 4, count 5 and counts 7 and 8.
62. The effective sentence which Mr. Matthews is to serve is 30 years imprisonment.
63. I make no determination as to whether Mr. Matthews is fit to possess a firearm since he has already been declared unfit to do so.
64. As part of the sentencing process, I hereby inform the immediate relatives of the deceased of their right, subject to the directives issued by the

Commissioner of Correctional Services, to make representations when placement of Mr. Matthews on parole, on day parole or under correctional supervision is considered and to attend any meeting of the parole board, as contemplated in terms of **Section 299A** of the CPA.

A.D. OLIVIER
ACTING JUDGE
NORTHERN CAPE DIVISION

REPRESENTATIVES OF PARTIES:

For THE STATE : Adv. L. Pillay
o.i.o Office of the Director Public Prosecutions
KIMBERLEY

For THE ACCUSED : Mr. Maroke (*Judicare*)
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