



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: AR15/2025

In the matter between:

MELUSI KHOZA

APPELLANT

and

THE STATE

RESPONDENT

Coram: MOSSOP and HLATSHWAYO JJ

Heard: 20 February 2026

Delivered: 6 March 2026

ORDER

On appeal from: the Durban Regional Court (sitting as the court of first instance):

1. The appeal against sentence is upheld.
2. The sentence imposed upon the appellant on 26 September 2023 is set aside and is replaced with the following sentence:
'The accused is sentenced to 12 years' imprisonment.'
3. This sentence is antedated, in terms of the provisions of s 282 of the Criminal Procedure Act 51 of 1977, to 26 September 2023.

JUDGMENT

Mossop J (Hlatshwayo J concurring):

Introduction

[1] A Greek tragedy was traditionally performed in honour of the god of wine and theatre, Dionysus, and usually featured a protagonist possessed of outstanding and admirable personal qualities who, nonetheless, suffers disaster because of a combination of the effects of an internal personal failing and external circumstances that he is unable to control. Certain of the facts of this matter, relating primarily to the appellant, suggest that this is such a drama with those features.

[2] The drama played itself out in a student residence of the Durban University of Technology (DUT). The actors in the drama were all students at that institution. The DUT is a multi-campus university, primarily situated in Durban but also having two campuses in Pietermaritzburg. It offers accommodation to its students in residential buildings located both on and off its campuses. The events that this appeal relates to occurred at an off-campus residence in Durban, called Sterling House (Sterling House). How such accommodation is structured is of utmost significance to the events to be considered. Sterling House offers three-bedded residential units, which also have an open plan kitchen of sorts, which is equipped with a fridge, crockery and, significantly, cutlery.

[3] During the afternoon of 7 January 2021, and in the three-bedded unit occupied by Mr Thabiso Mhlongo (the deceased), the appellant struck him with a single blow with a kitchen knife to the left side of the base of his neck. The deceased collapsed, bled profusely from his wound and then died. It was not disputed at his trial that the appellant had stabbed the deceased, although the circumstances under which this occurred were disputed.

The charge, conviction and sentence

[4] As a consequence of his conduct, the appellant was charged with a single count of murder, read with the provisions of s 258 of the Criminal Procedure Act 51 of 1977 (the Act) and with s 51(2) of the Criminal Law Amendment Act 105 of 1997 (the CLAA).

[5] Section 51(2) of the CLAA required the court a quo, in the absence of any substantial and compelling circumstances, upon conviction, to sentence the appellant, a first offender, to imprisonment for a minimum period of 15 years. Despite pleading not guilty to the charge of murder, the appellant was convicted by the Durban Regional Court on that count and received the minimum sentence prescribed by the CLAA, namely 15 years' imprisonment.

Leave to appeal

[6] Dissatisfied with that sentence, the appellant sought leave to appeal from the regional magistrate who convicted and sentenced him. That application was unsuccessful but a petition to the Judge President of this division in terms of the provisions of s 309C of the Act was favourably viewed, and the appellant was granted leave to appeal on the issue of sentence only.

The issue

[7] The only issue thus to be determined in this appeal is whether the sentence of 15 years' imprisonment imposed upon the appellant was appropriate in all the circumstances of the matter.

The facts

[8] It is necessary to first go back to the facts of the matter and to consider them in a little more detail before going forward to consider the appropriateness of the sentence imposed upon the appellant.

[9] The deceased and the appellant were both residents of Sterling House but were not accommodated in the same three-bedded unit. I shall refer to the unit in which the deceased resided as 'the deceased's unit'.

[10] In the first week of January 2021, students were returning to the DUT residences in dribs and drabs in anticipation of commencing, or resuming, their academic studies once the new academic year formally began. On the afternoon of 7 January 2021, there were three persons seated within the deceased's unit. Only two of them were actually residents of that unit, namely the deceased and Mr Siyabonga Dube (Mr Dube). The State's principal witness at the trial of the appellant, Mr Luyanda Dlamini (Mr Dlamini), was present in the room but did not ordinarily reside there.

[11] At some stage that afternoon, the appellant walked into the unit and greeted Mr Dlamini and Mr Dube, who returned his greeting. The deceased apparently did not return the greeting. The appellant remarked, caustically, that they were sitting with a person who did not greet him in return. This was obviously a reference to the deceased. The deceased said that the appellant was not entitled to say that of him, as it was the appellant who had entered the room and had found him there and the appellant was obliged to greet him.

[12] Apparently dissatisfied with this remark, the appellant moved closer to the seated deceased and began brushing the top of his head, back and forth, with his hand, saying that the deceased was but a 'boy'. At that, the deceased, by all accounts a large man and not a boy, rose from his seated position but, according to Mr Dlamini, moved backwards, away from the appellant. The appellant, by contrast, moved closer to the deceased and, according to Mr Dlamini, appeared to then punch the deceased. Mr Dlamini soon realised that the appellant had not, in fact, punched the deceased but had stabbed him. He came to this realisation when the deceased exclaimed 'oh, you are stabbing me'. Mr Dlamini described the stabbing to have occurred on the left upper side of the deceased's body, between the shoulder and the neck. This was confirmed by Mr Dube when he testified.

[13] The deceased slumped initially to his knees. After the stabbing, which consisted of that single blow, Mr Dlamini was able to see what had been used by the appellant. It was a kitchen knife, that would ordinarily be used to chop vegetables. The appellant had taken the knife from a shelf in the portion of the deceased's unit that functioned as a kitchen. It was common cause that the appellant had not possessed the knife when he first entered the deceased's unit. Having stabbed the deceased, the

appellant picked up his cellular telephone, placed the knife into his trouser pocket, and left the deceased's unit.

[14] Everyone in the deceased's unit hurriedly left it in order to try and obtain help and no one remained behind to try and assist the deceased, in what must have been his moment of greatest need. Mr Dlamini was later informed by paramedics who attended Sterling House that the deceased had passed away.

[15] According to the post-mortem examination conducted upon the deceased's body, he suffered an incisional wound of the neck that passed into his chest. A litre of blood was found in his left thoracic cage. The wound was described as being 20mm long, 12mm wide and approximately 130mm deep. The wound passed distally, and posteriorly, into the deceased's body, behind his left clavicle and resulted in an incision of the subclavian blood vessels¹ and the left lung. The cause of the deceased's death was said to be an incisional wound of the neck, passing into the chest.

[16] The findings of the post-mortem examination corresponded precisely with Mr Dlamini's observations regarding the inflicting of the fatal wound to the deceased.

Analysis

[17] The appellant advanced a defence of self-defence at his trial. In the light of the evidence of Mr Dlamini and Mr Dube, it was correctly dismissed by the court a quo.

[18] The accepted facts bring the realisation that the death of the deceased was entirely unnecessary and completely avoidable. It was a complete waste of a human life over what can only be described as a meaningless triviality. A natural response, when faced with such a senseless deprivation of life, is anger that it should ever have occurred. However, as Corbett JA observed in *S v Rabie*:²

'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

¹ These are paired major arteries of the upper thorax and are situated below the clavicle and supply blood to the posterior cerebrum, cerebellum, posterior neck, the upper limbs, and the superior and anterior chest wall.

² *S v Rabie* 1975 (4) SA 855 (A) at 866A-C.

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 pressures 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.'

[19] Corbett JA was, of course, commenting at a time when the CLAA was not yet enacted, but his comments on the approach that the judicial officer should adopt, and evince, remain of value and are applicable even in the era of the minimum sentence legislation. The fact that a minimum sentence may now be prescribed does not mean it is to be simply mechanistically applied. Each person who appears before a court is a unique individual and his or her qualities must be ascertained and evaluated as part of the sentencing process. The judicial officer imposing the sentence is required to not lose sight of the fact that a human being is to be sentenced.

[20] Because of the uniqueness of each person, there will be personal interests that are emphasised in favour of the accused person in mitigation of the sentence to be imposed. The accused's personal interests are no less valuable, and important, than any of the other considerations that must be taken into account when the appropriate sentence is determined. Those personal interests will ordinarily compete with two of the three basic sentencing considerations mentioned in the well-known, and often cited, matter of *S v Zinn*.³ That competition, naturally, brings about a tension between the interests mentioned in *Zinn*, and it is the skill of the judicial officer presiding to properly and accurately determine how that tension can fairly be accommodated in the sentence to be imposed. In some instances, as contemplated by Nugent JA in *S v Vilakazi*,⁴ that tension can only be resolved by permitting the personal circumstances of the person about to be sentenced to assume a less prominent consideration. As the learned judge observed:

'In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single,

³ *S v Zinn* 1969 (2) SA 537 (A) (*Zinn*). The two other interests are the nature of the crime and the interests of the community.

⁴ *S v Vilakazi* [2008] ZASCA 87; 2009 (1) SACR 552 (SCA) (*Vilakazi*) para 58.

whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of “flimsy” grounds that *Malgas* said should be avoided. 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.’ (Emphasis added.)

[21] This matter has certain self-evident facts. The first is that the appellant was convicted of a most serious crime. Murder ranks among the most heinous of crimes because of the high value that society rightly places on human life. The appellant unnecessarily took the life of the deceased over an issue of no moment. Secondly, it is so that the violent acts of those who destroy life ought not to be, and cannot be, condoned. Thirdly, even the taking of a life, as with most things, has gradations that mark degrees of seriousness.

[22] The picture that is formed from the evidence heard at a trial is not always only painted in stark hues of black and white. It may also be infused with shades of grey, which may permit the development of greater depth to the image sought to be depicted. When the picture that is revealed is of a cold-blooded and premeditated murder, it will usually be dealt with far more harshly than a picture that shows an impulsive act that unlawfully led to a death.⁵

[23] The offence for which the appellant was convicted was palpably not a pre-planned act but was, nonetheless, still serious. The State appreciated this from the outset because it was its case that the appellant had arrived, unarmed, at the deceased’s unit and had impulsively taken up a knife that he found there in order to deliver the fatal blow to the deceased. It is therefore safe to accept from these facts that the appellant had not entered the deceased’s unit with the fixed intention of killing him. This was recognised when the State framed its charge against the appellant, for he was charged with an offence in terms of s 51(2) of the CLAA and not with an offence mentioned in s 51(1). That decision eliminated the possibility of the appellant receiving a prescribed minimum sentence of life imprisonment if convicted. Thus, the State

⁵ *S v Khiba* 1993 (2) SACR 1 (A) at 4.

acknowledged that the facts of this case removed it from the most serious form of the existing gradations that define the crime of murder.

[24] At the end of the day, a sentencing court is required, after evaluating all the competing factors, to impose a sentence that is just. A just sentence may very well be a severe sentence. But as was said by the Supreme Court of the United States of America in *Furman v Georgia*:⁶

‘ . . . a severe punishment must not be excessive. A punishment is excessive under this principle if it is unnecessary . . . [i]f there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment inflicted is unnecessary and therefore excessive.’

[25] In setting about the difficult task of imposing an appropriate and just sentence, it is important, in my view, not to commence with the mindset that the prescribed minimum sentence is always a just sentence. It may be a just sentence given the facts of a matter and the personal characteristics of the offender. But, on the other hand, it may also not be. All the relevant circumstances of the case must be identified, considered and evaluated and then it should be considered whether the prescribed sentence is disproportionate to the crime, the offence and the legitimate needs of the community. That will require the court to consider what a just sentence would be in all the circumstances of the case. If a just sentence falls materially below the prescribed sentence there will, in my view, be substantial and compelling circumstances justifying a departure from the prescribed minimum sentence.⁷

[26] I mentioned at the outset of this judgment that the facts of this matter had some of the qualities of a Greek tragedy. I inclined to that view once I had considered the personal qualities of the appellant, as revealed by the evidence tendered in mitigation of sentence at his trial. He has had a most unfortunate, but remarkable, life.

[27] When he killed the deceased, the appellant was a young man of 20 years. He was enrolled at DUT in order to study toward a bachelor’s degree in child and youth

⁶ *Furman v Georgia* [1972] USSC 170; 408 US 238 (1972) at 279, quoted with approval in *S v Makwanyane and Another* [1995] ZACC 3; 1995 (2) SACR 1 (CC) para 232.

⁷ *S v GK* 2013 (2) SACR 505 (WCC) para 14.

care. As he explained when he testified under oath in mitigation of sentence, his own life experiences had been the source of the inspiration behind this academic choice. By way of brief explanation, he stated that he had literally grown up in a Streetwise Shelter. These shelters form part of a scheme run by a not-for-profit organisation in Durban that assists vulnerable children at risk. He had been housed in such a shelter for approximately eight years of his life, from 2011 to 2018. The first four years were spent at a shelter in Durban but in 2014, he had been rehoused to another shelter, still within the Streetwise Shelter scheme, called the Sibusiso Halfway House, situated near Hillcrest, and he remained there until he completed his matric examinations. He was able to enrol at DUT because he obtained the correct form of matric pass that permitted him to proceed to tertiary education and because he received funding both from the National Student Financial Aid Scheme and from a person associated with the running of the Streetwise Shelter, who he identified as being 'Sister Helen'. The latter person obviously recognised the potential in him and was impressed by him and was prepared to assist him.

[28] What has just been narrated is the appellant's description of his childhood. The record reveals that he was reluctant to divulge its minutiae. He therefore did not provide great detail of it but merely referred to it in broad brushstrokes. The pre-sentencing report prepared by a registered social worker, however, added the fine brush detail to the earlier years of his life. There was clearly much more that the appellant could have said but did not. He was apparently severely abused by his mother, who ultimately sent him away to live with his father at a young age, but after a year, she demanded that he return to her. Having secured that, she thereafter continued to physically abuse him severely until the community itself became concerned about his well-being and reported what was happening to him to social services. Social services intervened, agreed that his treatment was intolerable and saw to it that he was removed from his mother's care and placed in the Streetwise Shelter in 2011.

[29] After his transfer to the Sibusiso Halfway House, his father and his step-mother would periodically visit him, but his biological mother never did. Once he was discharged from the shelter after matriculating, he attempted to rekindle a relationship with his mother, but his efforts were unfulfilled, and his attempts to restart this

relationship ultimately failed, again through no fault of his own and not for lack of effort on his part.

[30] In my view, there is something to be said for a young man who is forced into a charitable shelter through circumstances not of his own doing and yet who manages to still make something of his life. The appellant kept his mind fixed on his studies amidst the turmoil of his personal life and found a way to overcome his own difficulties and matriculate from school with a pass that permitted him to enrol at an institution of higher learning. In achieving this, the appellant displayed admirable qualities. To achieve what he did could not have been easy, without the stabilising presence and influence of parental figures. The appellant is obviously possessed of remarkable qualities of survival and a tenacious will. He is, in that sense, the archetypal hero of a Greek tragedy.

[31] The appellant personally endured suffering in his formative years and has achieved self-realisation, which ultimately found expression in his chosen field of study. As to why he chose to study for a bachelor's degree in child and youth care, he explained as follows:

'I wanted to be a help to my community, that is what I wanted, I wanted to bring change where I come from, that is what I wanted, that was my goal, that is what I wanted.'

[32] There is no reason to doubt this because the appellant chose his field of study before he committed the crime to which this appeal relates. It is not just something cynically manufactured to achieve a lesser sentence. When considered against the backdrop of the wreckage of his family life, the sentiments contained in the extract above are remarkable, even noble.

[33] But just like a hero in a Greek tragedy, the appellant's character had an imperceptible flaw that manifested itself on 7 January 2021 and led to his downfall. Notwithstanding all that he went through in his younger years, perhaps even because of what he went through, it appears that the appellant was swift to anger and quick to physically assert himself in a social setting. For that is what appears to have manifested in his conduct in the deceased's unit on that fateful day. He first behaved

boorishly and then aggressively and sought, in a way, to embarrass and humiliate the deceased.

[34] When cross-examined while he gave evidence in mitigation of sentence, the appellant admitted that at the time that he killed the deceased he had ‘anger issues’. That, in truth, does not surprise me. The fact that he may naturally have a hair-trigger temper, however, cannot assist him. As I had occasion to observe in *Mudlay v S*:⁸

‘[20] It seems to me that the appellant simply lost his temper based upon the complainant’s alleged conduct. If he simply lost his temper and lashed out at the complainant in rage, then it is well to bear in mind what was said in *S v Kok*, namely:

“Loss of temper, that is to say a failure to control one’s emotional reactions, is not to be confused with a loss of cognitive control (see *S v Henry* 1999 (1) SACR 13 (SCA) at 20d - f).”

[21] The law is crafted so that it applies to all those who are subject to it, and it treats all as equals. It cannot be selectively applied to afford those who do not control their tempers a defence against allegations of criminal conduct at the expense of those who habitually control their tempers. The message must be clearly transmitted that consciously giving in to anger and responding with violence will not be tolerated...’ (Footnote omitted.)

[35] It seems to me that the situation that developed in the deceased’s unit was solely as a consequence of the appellant’s conduct. At trial, he attempted to describe a situation where he was forced to act in self-defence, but this was simply fanciful and was correctly rejected by the regional magistrate. The possibility of violence was absent until the appellant reacted as he did.

[36] Much of the appellant’s evidence in mitigation of sentence was devoted to expressions of remorse uttered by him regarding his conduct. There are many examples of this in his evidence but reference to only one such instance will suffice:

‘ACCUSED: Yes, the first thing I would like to say I am sorry, I am sorry in this court for like - even to the family of the deceased. I just, I want the court to know that I never meant to harm anyone, I never wanted like to hurt anyone. I never planned this, I am out of words.’

⁸ *Mudlay v S* [2024] ZAKZPHC 45.

[37] Saying sorry when the game is up is not a particularly difficult thing to do. It may become an attractive thing to do when it is appreciated that such an approach could soften the sentence to be imposed and it may accordingly be resorted to in an attempt to manipulate the outcome. While the social worker who reported on the appellant's personal circumstances indicated that the appellant was remorseful, I have the feeling that this may not have been true remorse on his part. I shall explain why I believe this may be the case.

[38] First, it will be wise to remind oneself of the difference between remorse and regret. Ponnan JA in *S v Matyityi*⁹ had the following to say:

'There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. 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 to exist 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.' (Footnotes omitted)

[39] In my view, had the appellant been truly remorseful about what he had done, he would have offered some assistance to the deceased after stabbing him, remained at the scene of the murder, and surrendered himself to the South African Police Service (SAPS) upon their arrival there. He did none of these things. He left the scene, and the haemorrhaging deceased, and he left Stirling House and went to a bed and breakfast establishment and then went on the run. He was on the run for a period of approximately two months before he was arrested.

⁹ *S v Matyityi* [2010] ZASCA 127; 2011 (1) SACR 40 (SCA) para 13.

[40] This appears to me not to be conduct consistent with remorse, but conduct focussed on his own survival. But is this surprising? I think not, because focussing on his own survival is what had characterised his life up to that point. This was a quality that he was compelled to develop in order to endure his childhood. I accept that as a relatively young man, he may well have been fearful about what was potentially going to happen to him because of what he had done. Fear and remorse are, obviously, two distinctly different emotions. His actions in the immediate aftermath of his destructive conduct do not show any signs of remorse and appear to show an absence of contrition and more of a focus on his own survival.

[41] A further reason why I am sceptical about the appellant's remorse is his plea of not guilty to the charge of murder. He initially provided no plea explanation, which is surprising when the defence actually relied upon is self-defence. This approach would seem to indicate that the appellant denied his own criminal responsibility for what he did, and that his plea was employed as a device to escape liability for it. The appellant later explained that he had adopted this strategy because there were allegations in some of the witnesses' statements with which he did not agree. To his credit, the appellant did, however, immediately admit that he had stabbed and killed the deceased when he was called to give his evidence in chief.

[42] A plea of guilty would have been an unequivocal expression of remorse by the appellant for what he had done. But it is possible that this is the legal advice that he was given by his legal representative. It seems unlikely to have been a strategy that the appellant, a person with no experience of the law, would have developed and taken on his own.

[43] *S v Malgas*¹⁰ is often mentioned when the issue of minimum sentences is discussed. The regional magistrate mentioned it, as do I, for it is an influential decision on the topic. In that matter, Marais JA observed that:¹¹

'C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

¹⁰ *S v Malgas* 2001 (1) SACR 469 (SCA).

¹¹ *Ibid* para 25.

D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.’

I caution myself against succumbing to any of the mentioned hypotheses.

[44] In sentencing a convicted person, it is not controversial that the judicial officer exercises a discretion.¹² As Schreiner JA mentioned in *R v Owen*:¹³

‘When it comes to the imposition of the sentence the judicial officer is no doubt entitled to take a wide range of factors into account, including the accused’s bad or good character, his apparent reformability and the like.’

It is also not capable of being disputed that an appeal court will be slow to interfere with a sentence imposed by a lower court, and that each case depends on its own facts.¹⁴ An appeal court, such as this court, consequently, may not disturb a sentence imposed by the sentencing court simply because the appeal court may have imposed a different sentence. For an appeal court to intervene and upset a sentence imposed by the sentencing court, there must be evidence of a misdirection of such seriousness that demonstrates that the sentencing court either did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing the sentence.¹⁵

[45] In *Director of Public Prosecutions, KwaZulu-Natal v Ngcobo and Others*,¹⁶ the Supreme Court of Appeal observed as follows:

‘Surely, the nature of the offence related to the personality of the offender, the justifiable expectations of the community and the effect of a sentence on both the offender and society are all part of the equation? Pre- and post-*Malgas* the essential question is whether the sentence imposed is in all the circumstances, just.’

¹² *S v Pieters* 1987 (3) SA 717 (A) at 727F-H; *S v Sadler* 2000 (1) SACR 331 (SCA) para 8.

¹³ *R v Owen* 1957 (1) SA 458 (A) at 462F-G.

¹⁴ *S v Zulu* 2003 (2) SACR 22 (SCA) para 11.

¹⁵ *S v Pillay* 1977 (4) SA 531 (A) at 535E-F; *S v Hewitt* [2016] ZASCA 100; 2017 (1) SACR 309 (SCA) para 8.

¹⁶ *Director of Public Prosecutions, KwaZulu-Natal v Ngcobo and Others* [2009] ZASCA 72; 2009 (2) SACR 361 (SCA) para 22.

[46] The personality of the offender, mentioned in the extract just quoted, and his qualities and personal circumstances are important considerations in determining a just sentence. It seems to me that this is where the regional magistrate misdirected herself.

[47] The regional magistrate diligently mentioned virtually everything that anyone said on the subject of sentencing in her judgment on that topic. Understanding the evidence led is obviously important and the judgment must reflect the presence of that understanding. But there must also be a synthesis of that evidence to demonstrate the thinking of the judicial officer and the process of her reasoning. That is lacking to a degree in the judgment on sentence, for a conclusion was arrived at without as full an exposition of the regional magistrate's reasoning on the issue as I would consider necessary.

[48] What the regional magistrate said about the appellant as a person that can be considered to be her own thoughts appears in a single paragraph of her judgment on sentence:

'In so far as the evidence before this Court pertaining to you is concerned, in as much as you allege you come from a family that may not have been united you had stability in respect of the child and youth care centres where are you resided and developed in terms of your education, ultimately enrolled at a tertiary institution. So, you cannot be described as immature.'

[49] That reasoning is flawed, in my view. Rather than view life in a shelter as being an undesirable experience, especially when it lasted for eight years, the regional magistrate appears to have regarded it as a positive experience as it provided stability to the appellant. In my view, that overlooks, and does not recognise, the awfulness of having to be placed in such a centre. And it does not afford any significance to the appellant's physical mistreatment at the hands of his own mother that led to him being placed in the shelter.

[50] As regards whether there were any substantial and compelling circumstances present that would justify a deviation from the prescribed minimum sentence, the

regional magistrate found that there were none. The prescribed minimum sentence was thus imposed.

[51] The regional magistrate's reasoning is not, with respect, convincing, justified, or sufficient. It failed to demonstrate a full and proper consideration and understanding of the appellant as a person and his life experiences, which were not afforded their true weight and significance. This court is therefore at liberty to intervene in the proceedings and reconsider the question of sentence.

[52] In my view, there were substantial and compelling reasons to depart from the prescribed minimum sentence. They may be found in the spontaneous nature of the offence, the appellant's youthfulness when he committed the offence, the appellant's unsatisfactory and tragic childhood, and the fact that the appellant had spent a period of two years and nine months in custody awaiting his trial. And, finally, it exists in the difference, in my view, between what I consider to be a just sentence in the circumstances of this matter and the minimum sentence imposed by the CLAA. I come to this conclusion not forgetting the misgivings that I have about the appellant's alleged remorse.

[53] In my view, there is a strong possibility of the rehabilitation of the appellant, for he is young and has qualities that may be employed to successfully achieve this. There is something worth saving in the appellant, who appears to be an intelligent person, and I do not see him as posing a risk to the wellbeing of society, as the regional magistrate found that he did. In addition, in my further view, this is not an instance contemplated by Nugent JA in *Vilakazi* where the personal circumstances of the appellant should be downgraded to a less prominent consideration. Those personal circumstances must stand upfront in determining a just sentence.

[54] I do not believe that a sentence of 15 years' imprisonment is appropriate on the facts of this case. I cannot ignore the fact that, for some reason, the appellant spent nearly three years awaiting trial in a matter that could not have been difficult to investigate. That will be accounted for in the sentence to be imposed by this court, but I caution that the proper approach is not simply to deduct the time spent in custody

from the sentence considered otherwise to be appropriate.¹⁷ That time awaiting trial is an appropriate consideration, amongst others, and has been taken into account in determining the sentence that I shall shortly propose.

[55] Sister Helen saw something in the appellant that was worth preserving. I think that I see something too. There can be no doubt that he must be severely punished for his unacceptable conduct but in ensuring that occurs, he should not be broken. He must, perhaps for the first time in his life, have the hope, ultimately, of a normal life.

Conclusion

[56] I would accordingly propose the following order:

1. The appeal against sentence is upheld.
2. The sentence imposed upon the appellant on 26 September 2023 is set aside and is replaced with the following sentence:
'The accused is sentenced to 12 years' imprisonment.'
3. This sentence is antedated, in terms of the provisions of s 282 of the Criminal Procedure Act 51 of 1977, to 26 September 2023.



MOSSOP J

I agree:

HLATSHWAYO J

¹⁷ *S v Radebe* 2013 (2) SACR 165 (SCA) para 14.

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