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IN THE NORTH WEST HIGH COURT, MAHIKENG

CASE NO: CA 53/2025

COURT A QUO: RC 194/2017

In the matter between:

CLIFFORD STEFORD ABRAHAMS

Appellant

AND

THE STATE

Respondent

DATE OF HEARING : 06 February 2026

DATE OF JUDGMENT : 25 March 2026

FOR THE APPELLANT : Adv. Gissing

FOR THE RESPONDENT : Adv. Tlatsana

Corum: HENDRICKS JP & MATLHAPE AJ

JUDGEMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives *via* email. The date and time for hand-down is deemed to be 10h00 on 25 March 2026.

ORDER

Resultantly, the following order is made:

- (i) The appeal against sentence is dismissed.

JUDGEMENT

Summary

Appeal against sentence – trial court imposed a sentence of 12 years imprisonment of which 4 years is suspended on certain conditions – powers of a court of appeal to interfere with a sentence imposed are very limited – principles restated.

HENDRICKS JP

- [1] Mr. Clifford Steford Abrahams (appellant) was arraigned before the Regional Court for the Regional Division of the North West, sitting at Potchefstroom and charged with two counts of rape and one count of sexual assault committed on 01 April 2017. He was convicted of two counts of attempted rape and one count of sexual assault. On 03 September 2019, the three counts were taken together for the purpose of sentence and he was sentenced to

twelve (12) years imprisonment, of which four (4) years is suspended for a period of five (5) years, on condition that he is not again convicted of contravening section 55 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, committed during the period of suspension. An application for leave to appeal both the conviction and sentence were made, with leave to appeal been granted only against the sentence imposed. This appeal against sentence is therefore with leave of the trial court.

- [2] With much of the evidence been either common cause or not seriously contested, a brief *exposé* of the relevant material facts of this matter is as follows. The appellant and the complainant were both in a nightclub in Potchefstroom on the night in question. Although they did not went there together, at some stage they danced together. The complainant, who was accompanied by friends, were to leave the club to make her way back to her student residence, when the friends first wanted to visit the ladies' room. The complainant waited for them.
- [3] While so waiting, she was approached by the appellant who offered to take her to her place of residence with his motor vehicle. She obliged. Instead of taking her to her residential place, he drove to his place of abode. She was not only surprised but also terrified. He stopped his motor vehicle at his place and at first forced himself onto her against her will and consent. He then performed *fellatio* upon her inside the motor vehicle after undressing her of her panty. He attempted to penetrate her vaginally but could not because he could

not get an erection. He then ordered her to alight and he took her into his house. She pretended to play with his dog whilst buying time in order to send text messages stating that she was about to be raped. One of the messages was sent to Mr. Ahmed Naceh, the bouncer of the night club that they attended.

- [4] The appellant ordered her into the bedroom where he undressed her as well as himself. He once more attempted to penetrate her vaginally but again without success, as he once again failed to get an erection. He then forced her to perform *fellatio* on him. Being afraid of him, she obliged, although it was against her will and without her consent. Mr. Ahmed Naceh, the bouncer, reacted on the text message sent by the complainant and went to the house of the appellant. He found the complainant and took her into his motor vehicle. She then reported the ordeal that befell her to him. A criminal charge was laid against the appellant.

- [5] The sentence of an effective term of eight (8) years imprisonment is assailed on the basis that it is grossly excessive and induces a sense of shock. Furthermore, that the trial court failed to consider an alternative form of punishment instead of a direct term of imprisonment. Further alternative that a sentence in terms of the provisions of either section 276 (1) (h) or section 276 (1) (i) of the Criminal Procedure Act (CPA)¹ will be a more appropriate sentence

¹ Criminal Procedure Act 51 of 1977.

under the circumstances of this case. No issue is taken with the ancillary order declaring the appellant unfit to possess a firearm².

- [6] Sentence is pre-eminently within the exercise of a discretion by the trial court, which must be exercised judicially and not arbitrary or capriciously³. A court of appeal will not lightly interfere with the exercise of this discretion by the trial court. It will only interfere if there is a serious misdirection(s) committed; or where an irregularity is committed by the trial court that vitiates the proceedings; or where the sentence imposed is shockingly severe and excessive and therefore disturbingly inappropriate to such an extent that no reasonable court would have imposed it. The disparity between the sentence imposed by the trial court and the sentence that the court of appeal would have imposed had it been the trial court, must be significantly different to such an extent that the sentence imposed is rendered grossly unfair. If it is not, a court of appeal will not interfere with the sentencing discretion exercised by the trial court⁴.

- [7] The personal circumstances of the appellant are as follows. He was 55 years of age in 2019 when he was sentenced. [He is now 62 years of age.] He was treated as a first offender by the trial court. He is the father of six children of whom three were still minors as at 2019 and were dependent upon him for their support. He was gainfully employed earning a salary of approximately R52 000.00

² S 105 of the Firearm Control Act 60 of 2000.

³ S v Rabie 1975 (4) SA 855 (A).

⁴ S v Petkar [1988] 2 All SA 550 (A).

per month. He is divorced. As aggravating circumstances are the fact that the complainant was 21 years of age at the time of this ordeal. The appellant could easily have been her father, and as such she trusted him when he offered her a lift to her student residence. He is convicted of two counts of attempted rape and one count of sexual assault, which offences are not only serious but also very prevalent in the area of jurisdiction of the trial court. The complainant was severely traumatized as a result of what happened to her at the hands of the appellant. She was still undergoing counselling in 2019, two years after the ordeal.

- [8] Advocate Gissing, acting on behalf of the appellant, laid much emphasis on the fact that the complainant sustained no physical injuries, as she had not been assaulted. The absence of injuries as a result of the absence of physical assault does not trivialize the crimes perpetrated, although it may be taken into account in imposing a suitable sentence. This sentiment was expressed by Advocate Tlatsana acting on behalf of the respondent. He submitted that that is the very reason why four (4) years imprisonment was suspended by the trial court. He furthermore contended that a non-custodial sentence will not only trivialize the seriousness of the offences committed, but will send a wrong message to society and under-emphasize and undermine the interest of society. All factors considered, he contended that no misdirection was committed by the trial court.

- [9] To reiterate, the powers of a court of appeal to interfere with the sentencing discretion exercised by a trial court are extremely limited. This is trite. Advocate Grissing made a valiant attempt in order to persuade this Court to interfere with the sentence imposed and he passionately canvassed for a non-custodial sentence or a sentence of correctional suspension. Section 276 (1)(h) alternatively section 276 (1)(i) were advocated for. This, Advocate Tlatsana stated will made the offenses appear to be trivial. It is trite that a court of appeal will not merely substitute a sentence because it is different from the sentence imposed. Additionally, the Supreme Court of Appeal held in *Kekana v The State*⁵ that the court will not interfere with the sentence imposed by the court a quo unless it is satisfied that the sentence has been vitiated by a material misdirection or is disturbingly inappropriate.
- [10] Reliance was placed by Adv. Gissing on the matter of **S v Truyens**⁶ for the proposition that the sentence imposed is shockingly excessive and severe and should be replaced with an appropriate sentence in terms of section 276 (1)(i). The facts in the Truyens matter are quite distinguishable from the facts of this case. Truyens concern theft of cattle which was sold in order to acquire money to pay for the medical needs of his children.
- [11] In the case at hand, there were two unsuccessful attempts to rape the complainant, that is why the appellant was convicted of two

⁵ 2013 (1) SACR 101 (SCA)

⁶ 2012 (1) SACR 79 (SCA).

counts of attempted rape, as well as one count of sexual assault, with regard to the *fellatio*. These offences are not only more serious but are also very prevalent. The complainant's privacy was invaded. Furthermore, the aggravating features of this case by far outweigh the personal circumstances of the appellant and the mitigating features, although mindful of the appellant's advanced age.

[12] Having regard to all the facts and circumstances of this case, I am unpersuaded that the learned Regional Magistrate committed any irregularity or that the sentence imposed is shockingly severe and excessive. I am inclined to agree with contentions of Adv. Tlatsana that a sentence either in terms of section 276 (1) (h) or 276 (1) (i) will send out a wrong message to society and will erode public confidence in the criminal justice system. It will also appear that the offences are trivialized.

[13] In the absence of any misdirection by the trial court, this Court sitting as a court of appeal is not at liberty to interfere with the sentencing discretion exercised by the trial court. Consequently, the appeal against the sentence imposed should fail.

Order

[14] Resultantly, the following order is made:

- (i) The appeal against sentence is dismissed.



R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG

I agree



B MATLHAPE
ACTING JUDGE OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG