

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: P57/2025

In the matter between:

CARMEN ROWAN GALLON

Petitioner

and

THE STATE

Respondent

JUDGMENT

NOKO J. (Bokako AJ concurring).

Introduction

[1] The petitioner, Carmen Rowen Gallon, was charged 38 counts of fraud totalling R20 605 834.49 as the potential prejudice and R15 522 429.70 as the real prejudice suffered

by her erstwhile employer, Sasol South Africa (Pty) Ltd (“*Sasol*”). Thirteen of the charges fell within the province of section 51(2) of the Criminal Law Amendment Act¹ 105 of 1997 (“*CLAA*”) which provides for minimum sentences in respect of convictions for certain offences. The remainder of the counts did not fall within the provisions of minimum sentence regime.

[2] The petitioner who was represented appeared before Regional Court Magistrate B Oswell (Court *a quo*) where she pleaded guilty to all the charges in terms of section 112 of the Criminal Procedure Act² (“*CPA*”) and convicted as such. She was sentenced to 15 years each in respect of the 13 counts which fall within the Minimum sentence regime and 15 years each in respect of 25 charges which fell outside the minimum sentence regime. The court *a quo* directed that the sentences imposed would run concurrently except that 5 years in respect of the conviction in respect of count 38 would run consecutively. The effective sentence was therefore 20 years. The petitioner agreed to forfeit her assets to the Assets Forfeiture Unit in terms of section 18 of the Prevention of Organised Crime Act³ and the pension fund interest for the benefit of the Sasol.

[3] The petitioner was aggrieved by the sentence and launched an application for leave to appeal on 31 January 2022 which was dismissed by the court *a quo*. The petitioner then launched the petition in terms of section 309(C) of the CPA on 21 November 2025.

[4] The petition was instituted outside the time frames prescribed and to this end it is accompanied by an application for the condonation. The main reasons advanced for the late filing was the fact that the petitioner financial resources were depleted having been terminated as employee by Sasol and her assets being forfeited to the AFU. The petitioner further contended that her appeal has prospects of success and on that basis, condonation should be granted.

[5] The application was not elegantly crafted and failed to provide proper account detailing standard pointers to be addressed when condonation is sought⁴ as it would be noted

¹ Act 105 of 1997.

² Act 51 of 1977.

³ Act 121 of 1998.

⁴ The Constitutional Court held in *Grootboom v National Prosecuting Authority and Another* [2012] ZACC 37 the court held that that “... the standard for considering an application for condonation is the interest of justice. However, the concept of interest of justice ... includes the nature of the relief sought, the extent and cause of

below, we are persuaded that there are good prospects in the appeal hence the condonation should be granted.

[6] Concerning the merits of the petition, the *raison d'etre* underpinning the petition are captured under two main reasons. First, that the court *a quo* erred in failing to find that the petitioner has placed factors which warrant departure from the prescribed minimum sentence as envisaged in terms of section 51(3) of the CLAA. Second, the court *a quo* failed to present proper foundation upon part of the sentence in respect of conviction under count 38 should not run concurrently with other sentences.

[7] The petitioner contends that the court *a quo* erred by failing to have regard to the following factors as constituting compelling and substantial reasons to warrant deviation from the minimum sentence. The factors are: (1) that the petitioner was a first offender; (2) she was remorseful hence pleaded guilty to the charges. She willingly agreed to sign over her petition to the complainant and did not resist the confiscation order, (3) she is a primary caregiver and a single mother (the husband having passed on after the sentence was imposed). The Magistrate focussed on the fact that the children were not dependent on the petitioner and overlooking to continued role she played to them as a mother. (4) the petitioner was under financial pressure of looking after the extended family, the situation worsened by the fact that the husband was unemployed. (5) the petitioner was subjected to an abuse and neglect by her husband. The lack of financial controls contributed to the ongoing criminal conduct which went undetected for 5 years. (6) the petitioner was motivated to steal for the altruistic reasons of giving those in need and this should have reduced her moral blameworthiness. (7) as it was not for personal gain the total asset value was 800k at the time when forfeiture order was made. Added thereto is the fact that she also surrendered her pension fund to the former employer/complainant as a sign of remorse.

[8] The petitioner contends that the court is enjoined to have regards to the above factors cumulatively and has committed a misdirection as she exercised her discretion concluding that they do not constitute compelling and substantial circumstances warranting departure from minimum sentence.

the delay, the effect of the delay the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal; and the prospects of success.”

[9] Further, that it is a misdirection to have imposed a sentence of 20 years which more than the prescribed minimum sentence without any warning to parties to prepare and without proper motivation when a sentence is imposed. This was captured under para 14 of the petition where it is stated that

“However, the court gave no express reasons for going beyond the 15 years, nor did it warn the defence that such an increase was in contemplation to allow argument on this point. This constituted a misdirection. If a court intends to exceed the normal range or prescribed minimum, it ought to justify that decision clearly on the record and allow the parties an opportunity to address the issue”.

[10] The petitioner referred to the judgment of the SCA in *S v Treasure* 2025 JDR 4229 where it was held that the accused who was found guilty of having stolen 10 million from the Covid Relief Fund was sentenced to 10 years imprisonment. To this end the petitioner recommended that a sentence of between 8 and 12 years would be appropriate.

[11] With regard to the contention that principles relating to directing that the sentence where appropriate be ordered to run concurrently were not properly followed. It is required of the presiding officer that proper reasons should be set out to explain the basis differentiating the 5-year period of the sentence which was ordered to run consecutively from other sentences. The differentiation could have been based on amount involved or the nature of crime committed in relation to others. This was not done, the petitioner argues.

[12] averred further that an appropriate sentence should have I must outrightly dismiss this contention as on the proper analysis of the sentences the court a quo did not exceed the prescribed minimum sentence in respect of any of the convictions. What the petitioner may correctly quarrel with is that sentence in respect of count 8 should have run concurrent with other sentences. Further elaboration would be noted below.

Legal principles and analysis

[13] It is trite that compelling and substantial factors have not been defined in the statute and courts have been reluctant to attach any definitive meaning. Further in the exercise of deciding where a case for departure has been presented the court is not bound to have regard to single factor, but factors should be considered cumulatively.

[14] The petition marshalled her case on the reduction of the sentences which were imposed in terms of section 51(2) of the CLAA which refers to the convictions relating 12 counts. Having left out the sentences of 15 years imposed in respect of the other 25 counts appears to mean that the petition is content to serve 15 years so imposed. This appears to be preposterous, and the order of the appeal court may ultimately become academic if the sentences are reduced in terms of section 51(3) of the CLAA to a period below 15 years as the petitioner would nevertheless still serve 15 years imprisonment imposed in respect of convictions not falling under section 51(2) of the CLAA.

[15] The petitioner's contention that the court *a quo* erred in not ordering concurrence for whole sentence in respect of conviction relating to count 38 has merits. Ordering concurrence of sentences is dealt with in terms of section 280(1) of the CPA the courts are enjoined to have regard to cumulative effect of the sentences which may at the same time section 280 (2) of the CPA which provides that punishments pursuant to conviction on several counts shall run consecutively unless the court has ordered. Makgoka J stated in *Mthethwa*⁵ that an order that sentences should run concurrently is called for where the evidence shows that the relevant offences are inextricably linked in terms of locality, time, protagonist and importantly, the fact that they were committed with one common intent.⁶ (*S v Mokela* 2012 (1) SACR 431 (SCA) para (11), where it was stated that This is so because the evidence shows that the two offences are inextricably linked in terms of the locality, time, protagonists and importantly the fact that they were 5 committed with one common intent.” In this case the modus operandi was the same. Without advancing reasons for the different treatment of the sentencing the presiding officer may have (or has) exercised her discretion arbitrarily.

[16] The Supreme Court of Appeal in *Maphaha*⁷ quoted with approval the sentiments set out in *S v Smith* 2012 (1) SACR 567 (SCA) at para 7 where it was stated that

‘What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to

⁵ *S v Mthethwa and Others* 2015 (1) SACR 302 (GP).

⁶ See also SCA in *S v Nemutandani* (944/13) [2014] ZASCA 128 (28 September 2014). At para 111 where the court stated that ‘...by not ordering the sentences to run concurrently, the trial court had committed an irregularity’.

⁷ *Maphaha v The State* (174/2017) [2018] ZASCA 08 (1 March 2018).

succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’

[17] The petitioner has demonstrated that prospects of success on appeal and the refusal of the application for leave to appeal was predicated on a misdirection or an improper exercise of the discretion⁸ and it is open for the court under the circumstances to the decision of the court *a quo*.

Order

[18] In the premises, I make the following order;

“The petitioner is granted leave to appeal to the High Court, Gauteng Division, Johannesburg.”



MV NOKO
Judge of the High Court.

I agree



T BOKAKO
Acting Judge of the High Court.

DISCLAIMER: This judgment is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 07 January 2026.

⁸ See also SCA in *Moremi Treasure v The State* (881/2024) [2025] ZASCA 137 (25 September 2025) at para 15 where the court held that it is trite law that an appeal court does not lightly interfere with the discretion exercised by a trial court when determining that a particular sentence is appropriate. It would generally only interfere if the trial court committed a material misdirection, or if the sentence imposed is so startling inappropriate that it induces a sense of shock.