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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO.: CC2/2026

In the matter between:

THE STATE

and

X[...] S[...]

Accused

SENTENCE

MALUNGA AJ

Introduction

[1] The accused was convicted of 1, murder and count 2, robbery with aggravating circumstances as defined in section 1(1)(b) of the Criminal Procedure Act 51 of 1977. The accused pleaded guilty and has been

convicted on both counts. He must now be sentenced for having committed the offences.

[2] In *State v Rabie*¹, Holmes JA reminded judicial officers of the importance of being fair to both the accused and to society in handing down a sentence. Justice, it was said, includes the element of mercy, which is the hallmark of a civilized and enlightened criminal justice system.

[3] The point of departure in sentencing is to have regard to the three interconnected factors relevant to an appropriate punishment, namely the offence convicted of, the offender and the interests of society. It is the Court's task to have regard not only to the offender, but also to the offence itself and the interests which society has in the imposition of a suitable sentence (*S v Zinn 1969 (2) SA 537 (A)*).

[4] Concurrently sentencing must be directed at addressing the traditional purposes of punishment. Those are deterrence, prevention, retribution and rehabilitation of the offender. At the end of it all, it is the unenviable task of the presiding officer of the court to achieve a proper balance amongst these competing factors and ultimately arrive at a sentence that is just.

Background

¹ 1975(4) SA 855 (A) at 861-2.

[5] A consideration of all the documents and the address by the respective counsel discloses the following background facts: the accused is the biological son of the deceased, the person he killed when she was 71 years of age. He lived with her in the same house at the time of the commission of the offences.

[6] On the evening of Sunday, 6 April 2025 and at Hofmeyer, the accused went to a tavern on Saturday evening. He returned home and found the deceased asleep. He decided to kill her in order to take her money.

[7] He strangled and/or suffocated her whilst she was asleep and took her wallet. He removed the R556.00 from her wallet, put the empty wallet in his bedroom, and he returned to drink liquor with his friends.

[8] The following morning, the deceased was found in her house. Her face was covered with a blanket and a pillow. Her empty wallet was found in the accused's room.

[9] The police were informed, and their investigation led to the arrest of the accused.

[10] The medico-legal post-mortem examination established the cause of death as (manual strangulation).

[11] The state allege that aggravating circumstances were present in that the accused inflicted grievous bodily harm on the victims body.

[12] The state, in the circumstances, sought the implementation of the prescribed minimum sentence provisions under section 51(1), read with Part I of Schedule 2, of the Criminal Law Amendment Act, 105 of 1997 (hereinafter “the CLAA”).

[13] The accused handed in a statement through his legal representative Mr Charles, in terms of section 112 of the CPA wherein he pleaded guilty. The state, which was represented by Mr Vena, accepted his plea. The court convicted the accused on the strength of his statement.

Legal Framework

[14] The provisions of Section 51(1) of the CLAA stipulate that a court shall sentence a person convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life. The provisions are subject, however, to Section 51(3) of the CLAA, which permits a court to impose a lesser sentence if it is satisfied that substantial and compelling circumstances exist.

[15] The offences for which the accused has been convicted indeed fall within the ambit of Section 51(1) of the CLAA, in relation to the minimum sentence of life imprisonment in that the death of the victim was caused in

course of committing or after having committed robbery with aggravating circumstances as defined in section 1 of the CLA.

[16] Furthermore, the death of the victim resulted from physical abuse, as contemplated in paragraphs (a) and (b) of the definition of ‘domestic violence’ in section 1 of the Domestic Violence Act, 116 of 1998, by the accused, who was in a domestic relationship, as defined in section 1 of the Act.

[17] The enquiry as to whether substantial and compelling circumstances exist is central to the determination to the proper sentence.

[18] In *S v Malgas*,² Marais JA held as follows regarding the meaning of ‘substantial and compelling circumstances’:

“That [the legislature] has refrained from giving such guidance as was done in Minnesota from whence the concept of “substantial and compelling circumstances” was derived is significant. It signals that it has deliberately left and advisedly left it to the courts to decide in the final analysis whether the circumstances of any particular case call for a departure from the prescribed sentence. In doing so, they are required to regard the prescribed sentences as being generally appropriate for crimes of the kind specified and enjoined not to depart from them unless they are satisfied that there is weighty justification for doing so.”ⁱ

² 2001 (1) SACR 469 (SCA) at para 18.

[19] In *S v Dodo*,³ the Constitutional Court emphasized the principle of proportionality in relation to sentencing. Akermann J held that:

‘...The concept of proportionality goes to the heart of the inquiry as to whether punishment is cruel, inhuman or degrading, particularly where, as here, it is almost exclusively the length of time for which an offender is sentenced that is in issue. This was recognized in *S v Makwanyane*. Section 12(1) guarantees, amongst others, the right “not to be deprived of freedom ...without just cause.” The “cause” justifying penal incarceration and thus the deprivation of offender’s freedom, is the offence committed. “Offence”, as used throughout in the present context, consists of all factors relevant to the nature and seriousness of the criminal act itself, as well as all relevant personal and other circumstances relating to the offender which could have bearing on the seriousness of the offence and culpability of the offender. In order to justify the deprivation of the offender’s freedom it must show that it is reasonably necessary to curb the offence and punish the offender. Thus, the length of the punishment must be proportionate to the offence.”

[20] The above rationale was followed in *S v Vilakazi*,⁴ in which the Supreme Court of Appeal confirmed those principles. The court also reiterated the importance of the principle of proportionality. It held that the punishment must be proportionate to what the offender deserves, no less and no more, since humans ought to be treated as ends in themselves, never

³ 2001 (1) SACR 594 (CC) at para 37.

⁴ 2009 (1) SACR 522 (SCA).

merely as a means to an end.⁵ For the purposes of assessing proportionality, a court is required to consider all the circumstances of the case.⁶

[21] With the above in mind, the imposition of a sentence is solely within the discretion of the trial court.⁷

Submissions by the Parties

[22] The parties called no witnesses for the purposes of sentencing, and they opted to make submissions from the bar.

[23] In making those submissions the parties handed up the following exhibits by agreement, (i) accused's statement in terms of section 112 of CPA marked exhibit A; (ii) a list of previous convictions, marked exhibit B; (iii) the post-mortem report, marked exhibit C; and the photo album depicting the scene of the crime marked exhibit D.

[24] Mr Charles, urged the court to consider the three factors as set out in *S v Zinn*⁸ and, in doing so, consider them cumulatively, to achieve the most just and equitable outcome.

[25] Counsel placed the accused's personal circumstances on record, which were the following:

⁵ At paragraph [3].

⁶ At Paragraph [15].

⁷ *S v Rabie* 1975 (4) SA 855 (A) at p857 D-E.

⁸ 1969 (2) SA 537 (A).

25.1 He 43 years old and single, with a twenty-four-year-old son residing in Cape Town with his mother.

25.2 He has a standard six (grade eight) level of education.

25.3 At the time of the arrest, the accused was employed on a farm as a general worker earning R3 500.00 per month.

25.4 He was residing with his mother (the deceased).

25.5 He has been in custody since 8 March 2025.

25.6 He does not have any pending cases.

[26] Mr Charles submitted that although both the offences are serious offences, the accused showed remorse and by pleading guilty.

[27] Counsel went on to submitted that the form of intent that was involved in the commission of the murder must be considered by the court, in that it was *dolus eventualis*, as opposed to *dolus directus*, which he submitted, lessened the accused's blameworthiness.

[28] Regarding the interests of society, Mr Charles submitted that a sentence of a long imprisonment is inevitable, but the accused should not attract the ultimate sentence of life imprisonment.

[29] Mr Vena, urged the court to impose life imprisonment. He submitted that the accused murdered his own mother, who was asleep at the time, by suffocating her with a pillow, the cause of death, namely manual strangulation as described by the postmortem report, however I am bound by the section 112 statement.

[30] He further submitted in aggravation of sentence, that the accused was a repeat offender, as he has previous convictions. In 2003 he was convicted of house breaking with the intent to steal and theft, and was sentenced to imprisonment for one year, suspended for five years on condition that he did not commit the same or similar offence during the period of suspension.

[31] In 2004 he was convicted of assault with intent to do grievous bodily harm and house breaking with the intent to steal and theft. Both counts were taken as one, and the accused was sentenced to seven years imprisonment.

[32] In 2015, the accused was convicted of house breaking with the intent to steal and theft and was sentenced to three years imprisonment, and the court issued an order declaring him unfit to possess a firearm.

[33] Mr Vena further submitted that the nature of the crime, in that it fell within the ambit of domestic violence and gender-based violence in our country, warranted the prescribed minimum sentence.

[34] Mr Vena then drew the court's attention to the fact that the deceased was an elderly woman, which the court had to consider when looking at the interest of society.

[35] Mr Vena submitted that when the above factors cumulatively, they do not support any substantial and compelling circumstances which warrant the departure from the prescribed minimum sentence.

Discussion

[36] When dealing with a sentence, the court is mindful of the triad of factors set out in *S v Zinn*⁹, which today remain as relevant as ever. The Court must consider the crime, the offender, and the interests of society.

[37] I shall now turn to deal with the relevant factors in the determination if there are any substantial and compelling circumstances which warrant a departure from the prescribed minimum sentence.

[38] I have anxiously considered the personal circumstances of the accused, to ascertain whether they qualify as substantial and compelling. The most prominent are that: He has no dependants, he is in his forties, he has three previous convictions which show a propensity to commit crimes, he lived with his mother, whom he murdered. In my view do not qualify as

⁹ 1969 (2) SA 537 (A).

substantial and compelling circumstances but rather “flimsy” as previously characterised in precedent.

[39] In *S v Vilakazi*,¹⁰ the court held as follows regarding the personal circumstances of an accused and departing from the prescribed minimum sentence for “flimsy reasons”:

“The personal circumstances of the appellant, so far as they are disclosed in the evidence, have been set out earlier. In the case 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, whether he has two or three, whether or not he is employed, 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.”

[40] There is nothing remarkable about the accused’s personal circumstances which could persuade the court to deviate from the prescribed minimum sentence and the authorities warn against departure from the prescribed sentence minimum based on flimsy reasons.

[41] It goes without saying that murder, together with robbery with aggravating circumstances, are by their very nature horrendous and heinous crimes, which have been frowned upon by society as far back as antiquity.

¹⁰ *S v Vilakazi* supra at para 58.

[42] However, the murder of one's own mother is the ultimate betrayal in society, where an individual can end the very life that gave birth, succour and upbringing to him.

[43] A society is judged on how it treats its most vulnerable members, such as the elderly and disabled in this matter, for a frail seventy-one-year-old woman to be brutally murdered, at the hands of her son, who should have been her protector is something that must be condemned by all in society.

[44] To add salt to the wound, the accused killed his own mother for a mere R556.00 so that he could purchase liquor. Mr Charles argued that the fact that the murder fell within the ambit of *dolus eventualis*, as opposed to *dolus directus*, should be considered by the court. I, however, disagree, as the accused found his mother asleep and has sufficient opportunity to reconcile himself with what he was about to do.

[45] The accused indeed pleaded guilty and was said to be remorseful. Mr Vena, however, argued that the state had a substantial and formidable case against the accused in any event and that the accused was more regretful than remorseful. His guilty plea in the circumstances was a neutral factor

rather than a mitigating one. In my view he has failed to pass the stringent test for remorse as set out in *S v Matyityi*.¹¹

Conclusion

[46] The test for when the prescribed sentence may be departed from was expressed as follows in *S v Malgas*:¹²

“If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is to impose a lesser sentence.”

Conclusion

[47] In *S v Vilakazi*¹³, the court held that the test set out in *S v Malgas*, in essence, means that:

“It is incumbent upon a court in every case, before it imposes a prescribed minimum sentence, to assess, upon a consideration of all the circumstances of the particular case, whether the prescribed sentence is indeed proportionate to the particular offence.”

¹¹ 2011 (1)SACR 40 (SCA) para 13

¹² *S v Malgas* supra at para 25.

¹³ *S v Vilakazi* supra at para 15.

[58] Mr Charles correctly conceded that the accused was looking at substantial period of imprisonment; he, however, urged the court to sentence the accused to between eighteen and twenty years imprisonment

[49] In dealing with a sentence of life imprisonment, the Supreme Court of Appeal held in *Ngcobo v S*¹⁴ that the period spent in custody before conviction and sentencing is not, on its own, a substantial and compelling circumstance. It is merely a factor in determining whether the sentence imposed is disproportionate and unjust. The time that the accused spent in custody in this case is not a substantial and compelling circumstance which warrants the court to deviate from the minimum prescribed sentence. Furthermore I also did not come to the conclusion that the sentence is disproportionate when all the factors and precedent are considered.

[50] After holistically considering all the factors set out and weighing this judgment, I am not satisfied that there are substantial and compelling circumstances which warrant the deviation from the prescribed minimum sentence

Order

[51] Accordingly, the following order is made:

¹⁴ *Ngcobo v S* 2018 (1) SACR 479 (SCA) para 14.

1. **Count 1**, murder; the accused is sentenced to undergo life imprisonment; and
2. **Count 2**, robbery with aggravating circumstances the accused is sentenced to undergo 15 years imprisonment.
3. The sentence in count 2 shall be ordered to run concurrently, with the sentence on count 1 as ordered by statute.

S Y MALUNGA
ACTING JUDGE OF THE HIGH COURT EASTERN CAPE
DIVISION

APPEARANCES:

Counsel for the State : *Adv Vena*

Instructed by : Director of Public Prosecutions
Makhanda

Counsel for the Accused : *Adv Charles*

Instructed by : Legal Aid South Africa
Makhanda

Heard on : 23, 24 February 2026

Judgment Delivered on : 27 February 2026
