



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: A13/2026

Case number (Regional Court): SWS 21/2023

JASON DE BRUYN

Appellant

and

THE STATE

Respondent

Coram:	Nziweni, J <i>et</i> Van Zyl, AJ
Heard on:	24 April 2026
Judgment:	13 May 2026

Summary: Appellant convicted in the regional court of murder and defeating the ends of justice – sentenced to 25 years’ imprisonment in respect of murder, plus two years’ imprisonment in respect of defeating the end of justice – whether regional court misdirected itself in imposing 25 years’ direct imprisonment in respect of murder conviction – deviation from prescribed minimum sentence for murder – regional court deviated upon considering the relevant circumstances – no further deviation appropriate on the fact – appeal dismissed

ORDER

The appeal is dismissed.

JUDGMENT

VAN ZYL, AJ:

Introduction

1. In August 2014 Mr Edmere Chinzete was hit on the head with a hammer, and stabbed repeatedly.¹ His body was pushed out of a car and over a wall on the R44 coastal road near Gordon's Bay. It was discovered by a traffic officer two weeks later.
2. The appellant was arrested in 2022. The charge sheet alleged that the appellant had unlawfully and intentionally killed Mr Chinzete by hitting him with a hammer. It was further alleged that the appellant had defeated the ends of justice by destroying the evidence implicating him, namely by washing and cleaning the car used in the commission of the murder.
3. On 29 January 2024 the appellant² was convicted in the Somerset West Regional Court of murder, read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (the CLAA (the so-called minimum sentence legislation)), and defeating the ends of justice. The conviction followed a plea of guilty in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977 (the CPA). The appellant was legally represented at the time.
4. On 29 April 2024, he was sentenced to 25 years' direct imprisonment on the murder conviction. In respect of the conviction on the charge of defeating the end of justice, he was sentenced to two years direct' imprisonment, which was wholly suspended for a period of five years.

¹ The pathologist's report indicates extensive injuries.

² The appellant was Accused 3. The State relied on the doctrine of common purpose.

5. This is an appeal against the sentence of 25 years' direct imprisonment imposed in respect of the murder conviction. The appellant is currently in custody, and leave to appeal was granted upon petition.

This Court's approach on appeal against sentence

6. The test on appeal in relation to sentence is "*whether the court a quo misdirected itself by the sentence imposed or if there is a disparity between the sentence of the trial court and the sentence which the Appellate Court would have imposed had it been the trial court that it so marked that it can properly be described as shockingly, startling or disturbingly inappropriate*".³
7. Sentencing is about achieving the right balance between the crime, the offender and the interests of the community.⁴ A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others.⁵
8. The question is essentially whether, on a consideration of the particular facts of the case, the sentence imposed is proportionate to the offence, with reference to the nature of the offence, the interests of society and the circumstances of the offender.
9. In *S v Pillay*⁶ the appellate division (as it then was) held that the word "misdirection" simply means an error committed by the court in determining or applying the facts for assessing the appropriate sentence. As the essential enquiry on appeal against sentence is not whether the sentence was right or wrong, but whether the court that imposed it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the

³ *S v Van de Venter* 2011 (1) SACR 238 (SCA) para 14.

⁴ *S v Zinn* 1969 (2) SA 537 (A) at 540G-H.

⁵ *S v Banda* 1991 (2) SA 352 (BG) at 355A.

⁶ 1977 (4) SA 531 (A) at 535E-F.

appeal court to interfere with the sentence. The misdirection must be of such a nature, degree or seriousness that it shows, directly or inferentially, that the court did not exercise its discretion at all or exercised it improperly or unreasonably. Such a misdirection is usually and conveniently termed one that vitiates the court's discretion on sentence.

10. Where prescribed minimum sentences are concerned, this Court must have regard to what was stated in *S v Malgas*:⁷ the Supreme Court of Appeal provided guidelines to be followed in determining whether substantial and compelling circumstances exist that justify departure from the prescribed sentence.
11. Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment as the sentence that should ordinarily and in the absence of weighty justification be imposed for certain crimes. 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.
12. 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. All factors traditionally taken into account in sentencing continue to play a role. None is excluded at the outset from consideration in the sentencing process.
13. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ("substantial and compelling") and must be such as would cumulatively justify a departure from the standardised response that the legislature has ordained.

⁷ 2001 (1) SACR 469 (SCA) para 25.

14. Substantial and compelling circumstances need not be exceptional in the sense that they are rare or seldom encountered, nor are they limited to factors which diminish the moral guilt of the accused. As discussed in *S v Malgas*, the essential issue is whether the sentence imposed is proportional having regard the triad in *S v Zinn*.
15. It is against this background that the appellant's case is considered.

The grounds of appeal

16. Under section 51(1) of the CLAA, "*a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part 1 of Schedule 2 to imprisonment for life*". Schedule 2, Part 1 of the CLAA includes the offence of murder, when (amongst other circumstances) it was "*committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy*", as in the present matter.
17. The regional court deviated from the prescribed minimum sentence of life imprisonment upon finding that substantial and compelling circumstances existed to do so – hence the 25-year sentence on the murder conviction.
18. The appellant nevertheless contends that the sentence of 25 years' direct imprisonment is vitiated by multiple misdirections that collectively produced a sentence that is disproportionate, unjust, and inconsistent with the values of dignity, proportionality and rehabilitation that must underpin every sentencing exercise in South Africa's constitutional democracy. These misdirections included the following:
 - 18.1 Failure properly to consider the probation officer's report which detailed, in particular, the appellant's childhood sexual abuse at the hands of his cousin's wife (Accused 1), and the influence of his domineering father. The appellant submits that the regional court's

engagement with the contents of this report was superficial and inadequate. While the regional court made passing reference to certain elements to the appellant's background, the detailed professional findings contained in the report were not meaningfully analysed or properly weighed against the aggravating factors.

- 18.2 The sexual abuse finding was not properly weighed. The probation officer's report explicitly details that the appellant was subjected to prolonged childhood sexual abuse by Accused 1. The finding was not disputed and was acknowledged by both the magistrate and the prosecutor. The appellant contends that the regional court acknowledges the sexual abuse in the sentencing judgment but treated it as one of many rather than as a profoundly significant mitigating factor that fundamentally affected the appellant's psychological development and his capacity for independent moral judgment on the night of the offence.
- 18.3 Reliance on unsubstantiated prosecutorial assertions: the appellant argues that the regional court took into account facts that did not constitute evidence, but that were submissions made from the Bar.
- 18.4 Overemphasis on the seriousness of the offence and the interests of the community: the appellant contends that the general community interest considerations applied by the regional court were overbroad in the context of this specific case. The appellant was not a random violent offender preying on strangers in public places. He was a young man drawn into a specific and highly unusual set of circumstances involving a dysfunctional family business, a domineering abusive father, and a lifetime of conditioned psychological obedience. The general community interest in deterring random violent crime is not served proportionately by a near-maximum sentence in these specific circumstances.
- 18.5 An erroneous finding regarding paternal influence: the appellant

states that the regional court found in its sentencing judgment that the appellant assaulted the deceased on his own accord and was not influenced by his father to do so. The appellant submits that this finding is factually incorrect and constitutes a material misdirection.

18.6 Inadequate weight was given to the appellant's first offender status. The appellant argues that the regional court acknowledged that the appellant was a first offender but did not give it adequate weight in the sentencing calculation.

18.7 The appellant's youth and immaturity were not sufficiently weighed.

18.8 The appellant's genuine remorse and willingness to testify against co-accused: the appellant pleaded guilty to both counts at the earliest opportunity, illustrating remorse and taking responsibility for his conduct without wasting the court's time. Of particular significance is the uncontroverted evidence that from the onset of proceedings the appellant intended to become a section 204 witness against his co-accused and that he maintained this status throughout the proceedings. The appellant says that the regional court acknowledged that this was a mitigating factor but did not give it the weight it deserves.

19. The probation officer recommended that the regional court consider sentencing the appellant in terms of section 276(1)(b) of the CPA,⁸ including a sentence in terms of section 276(1)(h) that provides for correctional supervision as a sentencing option. This would enable the appellant to be supervised within the community, including house detention, minimum hours of community service per month, mandatory employment, participation in rehabilitation programmes, movement restrictions, unannounced home visits, drug and alcohol prohibition, and prohibition from contacting specified

⁸ "(1) Subject to the provisions of this Act and any other law and of the common law, the following sentences may be passed upon a person convicted of an offence, namely ...
(b) imprisonment, including imprisonment for life or imprisonment for an indefinite period ..."

persons.

20. Having regard to all of the above, the appellant suggests that a sentence in the range of 15 years' imprisonment would be appropriate. He requests the court in terms of section 276(3)(a)⁹ of the CPA to consider ordering that a portion of such sentence be served under correctional supervision.

Consideration of the sentence imposed by the regional court

21. The murder of Mr Chinzete was brutal. He was assaulted with a hammer, and sustained multiple injuries, including repeated stabbings. His body was thrown to the side of the road, and was abandoned. It appears from the content of the *post-mortem* report that the appellant and his co -accused showed no mercy when they committed the offence. The appellant cleaned the car in which the murder took place, so that the perpetrators' actions could not be traced.
22. Mr Chinzete had, at the time, been working for the same company as his assailants, namely a distribution company known as M&I which was under the management of Accused 1 and the appellant's late biological father, Mr Raymond de Bruyn. He had a family; he had his wife, a child, and a cousin. His loved ones searched for him for two weeks, and even asked the appellant and his co-accused whether they knew his whereabouts. His body was found not because of the appellant's change of heart, but because a traffic officer stumbled upon it.
23. The appellant continued with his life, and it seems from the probation officer's report that he has tried to make it a meaningful one. One may ask, however, whether, if the appellant had not been apprehended in 2022, his involvement in the murder would ever have come to light. It is so that he showed remorse after he had been caught, but there is no indication on the record of any prior

⁹ "(3) Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court- (a) from imposing imprisonment together with correctional supervision; ..."

intention to come clean. He would have continued living his life – with his secret – had there not, after many years, been a break in the case. It is in this context that the appellant's submission that the appellant has "genuine and documented rehabilitative potential", must be viewed. In any event, as indicated below, the regional court took the appellant's commendable attitude in not wasting the court's time, and his willingness to testify against his co-accused, into consideration in finding that substantial and compelling circumstances existed to deviate from the prescribed life sentence.

24. Mr Chinzete's family will never get adequate support or compensation. His death is a tragedy that will remain with them for the rest of their lives.
25. The following circumstances were placed before the regional court in mitigation of sentence, together with the probation officer's report: at the time of the murder the appellant was 20 years old; he was not married and had no children; he was a first offender in relation to murder, and had been in custody since his conviction. He had a previous conviction for reckless driving, but it was an old one - a 10-year period had since elapsed. He was gainfully employed as a security officer in a security company. He had pleaded guilty; he had not wasted the court's time, and was willing to testify against his co-accused.
26. The appellant was raised by both biological parents in Strand, together with his four older brothers. His father founded and led a church and the family was actively involved in religious life. During the appellant's middle childhood years Accused 1 entered the family's life through his cousin's marriage. The probation officer's report states that her entry onto the scene marked the beginning of dysfunction, abuse (including sexual abuse) and psychological manipulation that continued throughout the appellant's formative years. This was acknowledged by the regional court in both the sentencing judgment and the ruling on leave to appeal.
27. Beyond the sexual abuse the appellant was subjected to a sustained campaign of spiritual and psychological manipulation. According to the

probation officer, Accused 1 claimed to see ghosts and hallucinate, claimed to cast spells over family members, demanded that the family to go to the beach at night to escape evil and accused extended family members of involvement in dark magic and other practices. The appellant's father was described in the probation officer's report as ruling the family by dictatorship and never allowing the children to make their own choices. He demanded absolute obedience. This systematic deprivation of normal social development, combined with absolute authoritarian control, created in the appellant a deeply conditioned psychological framework for fear-based obedience to his father that the probation officer identified as a primary contribution factor to his conduct on the night of the offence.

28. The appellant's childhood history is undoubtedly tragic, but I do not agree that they justify a further reduction from the prescribed minimum sentence. No expert evidence was proffered or defence raised that the appellant had suffered from any form of mental incapacity as a result of his childhood experiences at the time of the commission of the crime, or that he was coerced into hitting Mr Chinzete with the hammer. The regional court clearly considered the circumstances discussed in the probation officer's report within the broader context of the case. By implication, the regional court considered the specific factors mentioned by counsel for the appellant, namely that the appellant's childhood sexual abuse was central contributing factor to his conduct, that he acted under the conditioned fear and obedience to his father; that his family environment was dysfunctional and isolated.
29. One must keep in mind that there is no such thing as a perfect judgment. Merely because a certain aspect is not mentioned in a judgment does not necessarily mean that it was not considered. In *Director of Public Prosecutions: Limpopo v Molohe and another*¹⁰ the SCA held that its "*function is not to seek to discover reasons adverse to the conclusions of the trial judge.... It is true that no judgment is perfect and all embracing, but it does not necessarily follow that, because certain aspects were not mentioned in*

¹⁰ 2020 (2) SACR 343 (SCA) at para [55], confirming *R v Dhlumayo* 1948 (2) SA 677 (A) at 706.

the judgment, they were not considered.”

30. The regional court considered that compelling and substantial circumstances appeared from the appellant’s personal circumstances, namely that the appellant was relatively youthful at the time of the commission of the crimes, that he had pleaded guilty to both offences and thus took responsibility for his actions, and that he had spent about a year and six months in prison prior to sentence. His willingness to testify against his co-accused was also considered to be a contributing factor justifying deviation from the prescribed minimum sentence.
31. In *S v Muller*¹¹ the court stated that: *"I take account that this accused has no previous convictions and that he is a man in his fifties. However, I must also take into account that there is no authority for the proposition that the previous clean record of an accused convicted of offences in Part I of Schedule 2 constitutes, in and of itself, a substantial and compelling circumstance. At most it would be one of the considerations considered for exploring the possibility that, in conjunction with other factors, it may persuade the sentencing court to make such a finding."*
32. As indicated, the regional court found the appellant’s youth to be a factor contributing to the existence of substantial and compelling circumstances to deviate from the prescribed life sentence. The appellant was 20 years of age at the time of the commission of the offence, and he fell outside the formal provisions of the Child Justice Act 75 of 2008 (which applies to persons under 18). The SCA in *S v Matyityi*¹² confirmed that youth is *prima facie* a mitigating factor, and that a court will not generally punish an immature young person as it would a mature adult. The SCA held that a person of 20 years must show by acceptable evidence that he was immature to an extent that his immaturity can operate as a mitigating factor. In the present matter, the

¹¹ [2006] ZAGPHC 51 (23 May 2006) para 59.

¹² 2011 (1) SACR 40 (SCA) para 14. The SCA stated *inter alia* that it is “*trite that a teenager is prima facie to be regarded as immature and that the youthfulness of an offender will invariably be a mitigating factor, unless it appears that the viciousness of his or her deeds rule out immaturity*”.

regional court expressly dealt with this factor in declining to impose a life sentence.

33. The fact that the appellant's status as a first offender (in respect of murder) in the present case was not regarded as a substantial and compelling circumstance cannot be faulted. The appellant complains that his defence in this respect, and his reliance on what was stated in *Samuels v S*¹³ in relation to the issue of an accused's first offender status, was insufficiently considered. The regional court however (correctly, in my view) distinguished *Samuels* on the basis that the minimum sentence provisions of section 51(1) of the CLAA were not applicable in that case. That case dealt with a completely different crime, namely the contravention of section 2 read with s 39(2) of the Arms and Ammunitions Act 75 of 1969. The SCA in any event did not imply that first offender status must be given particular preference in the line-up of relevant factors. In the present matter, the appellant's status as first offender was not ignored, but was duly considered along with the other factors relevant to the question of sentence.
34. As to the period in detention pre-sentence, it was held in *Director of Public Prosecutions North Gauteng: Pretoria v Gwala and others*¹⁴ that such period is but one of the factors that should be considered in determining whether the effective period of imprisonment to be imposed is justified. It was further stated that the test is not whether, on its own, that period of detention constitutes a substantial and compelling circumstance, but whether the effective sentence proposed is proportionate to the crimes and whether the sentence in all the circumstances, including the period spent in detention prior to conviction and sentence, is a just one.
35. The appellant's case was brought to court fairly quickly in comparison to most other cases. In any event, the regional court nevertheless listed it as a factor in finding that substantial and compelling circumstances existed for deviation from the prescribed life sentence.

¹³ 2011 (1) SACR 9 (SCA) paras 6 and 12.

¹⁴ 2014 (2) SACR 337 (SCA) paras 10-19.

36. It does not appear, from a reading of the regional court's judgment as a whole, that the "unsubstantiated facts" upon which the regional court is said to have relied were material in the consideration of what an appropriate sentence would be. The mitigating factors far outweighed by aggravating factors. There is no justification for the imposition of a lesser sentence in further deviation from the prescribed minimum sentence, and the reliance or not upon the impugned facts does not change this position. The sentence imposed in respect of the murder conviction is not shockingly disproportionate. If anything, it is relatively lenient given the aggravating circumstances. This is not a matter in which a non-custodial sentence is appropriate. Section 276(3)(a) of the CPA expressly provides that a court's powers in pairing a custodial sentence with a non-custodial one is subject to the provisions of section 51 of the CLAA.¹⁵ I am also not in agreement with the appellant's suggested reduction of his current 25-year sentence to one of 15 years.
37. It is of course correct, as counsel for the appellant pointed out, that the Constitutional Court in *S v Dodo*¹⁶ confirmed that an offender should not be sacrificed at the altar of deterrence¹⁷ for the benefit of the society, and that every sentence must reflect a genuine and individualized assessment of the specific offender before the court. The regional court in the present matter did no sacrificing. Given the particular nature of the crime, I do not agree with the appellant's argument that it (the crime) was unduly emphasised at the appellant's expense.
38. The principle of mercy acknowledged in *S v Rabie*¹⁸ requires that it be given genuine rather than nominal content in the sentence actually imposed. The regional court's finding that substantial and compelling circumstances existed to deviate from the prescribed minimum sentence shows exactly that: mercy towards the appellant in the particular circumstances of the case.

¹⁵ See footnote 9 above.

¹⁶ 2001 (3) SA 382 (CC) at para 38.

¹⁷ See *Phillips v S* [2016] ZASCA 187 (1 December 2016) para 18.

¹⁸ 1975 (4) SA 855 (A).

39. It can, in all the circumstances, not be said that the regional court misdirected itself in sentencing the appellant as it did.

Order

40. I accordingly propose that the following order be granted:

The appeal is dismissed.

P. S. VAN ZYL
Acting Judge of the High Court

I agree, and it is so ordered.

C. N. NZIWENI
Judge of the High Court

Appearances:

For the appellant:

Instructed by:

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For the respondent:

Instructed by:

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