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

CASE NUMBER: A145/2025

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates NO

In the matter between:-

G[...] B[...] M[...]

Appellant

and

THE STATE

Respondent

JUDGMENT ON APPEAL

REID J (STRIJDOM J concurring):

Introduction

[1] The appellant, Mr G[...] B[...] M[...], appeals to this court against the sentence of life imprisonment imposed upon him by the Regional Court, Pretoria, on 19 September 2024. He was convicted on a single count of rape, contravening section 3 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*, read

with the provisions of section 51 of the *Criminal Law Amendment Act* 105 of 1997 (the Act).

[2] The complainant was a seven-year-old girl. The appellant was a 22 year old male. The appellant and the complainant are related, the appellant being the uncle of the complainant.

[3] As the sentence that was granted against the appellant is life imprisonment, the appeal is with the automatic right prescribed in section 309(1)(a) of the *Criminal Procedure Act* 51 of 1977 (the CPA Act). The appeal is against sentence only.

Material background facts

[4] The facts of the matter are largely common cause or not seriously disputed. At the time of the offence, the appellant resided at the complainant's parental home.

[5] The complainant was entrusted to the appellant's care when her parents were at work.

[6] The complainant testified that the appellant raped her on several occasions during August 2022, usually in the mornings before she went to school. The appellant, in his defence, denied the allegations. However, during the pre-sentence investigation with a social worker, he admitted to raping the complainant once, claiming he was under the influence of drugs.

Legal arguments

[7] The appellant's grounds of appeal, as argued by Adv Van Wyk, centre on the contention that the trial court erred in not finding substantial and compelling circumstances to justify a departure from the prescribed minimum sentence of life imprisonment.

[8] Counsel submitted that the following factors, cumulatively considered, should have warranted a lesser sentence:

- 8.1. the appellant was a first offender.
- 8.2. he was a relatively young man of 22.
- 8.3. he had spent 1 year and 8 months in custody awaiting the finalisation of his trial.
- 8.4. the apparent lack of physical injuries on the complainant beyond those inherent in the act of rape; and (e) his admission to the social worker indicated the potential for remorse and rehabilitation.

[9] Adv van Wyk argues that this matter is not one that should be visited by a life-sentence, on the basis that it is not as serious (in the absence of assault or multiple rapes) as other grievous rapes.

[10] Adv Lalane, for the respondent, argued that the sentence imposed befits the offence and that the trial court correctly exercised its discretion.

[11] He submitted that the aggravating factors present-namely the tender age and vulnerability of the complainant, the breach of trust by a family member and caregiver, and the profound physical and psychological impact on the victim-far outweigh the personal circumstances of the appellant and extinguish any claim to substantial and compelling circumstances.

Legal principles

[12] The principles governing an appeal against sentence are well-established. Sentencing is pre-eminently a matter for the discretion of the trial court.

[13] A court of appeal will not erode that discretion and will only interfere if the trial court did not exercise its discretion judicially and properly. This would be the case if the sentence is vitiated by an irregularity or misdirection, or if it is disturbingly inappropriate. See *S v Rabie* 1975 (4) SA 855 (A) and *S v Packereysammy* 2004 (2) SACR 169 (SCA).

[14] The appeal before this Court, determines thus on the answer of whether the trial court's finding that no substantial and compelling circumstances existed, is one that a reasonable court could not have made.

[15] The imposition of life imprisonment for the rape of a child under the age of 16 is governed by section 51(1) of the CPA Act, read with Part I of Schedule 2. In determining whether substantial and compelling circumstances exist, a court must conduct a balancing exercise, weighing the aggravating factors against the mitigating factors. As was made clear in *S v Vilakazi* 2009 (1) SACR 552 (SCA), a court is required to apply its mind to the question of whether the prescribed sentence is proportionate to the particular offence.

[16] The prescribed sentence cannot be assumed a priori to be proportionate. The enquiry requires a gradated and individualised assessment. As the court in *S v GN* 2010 (1) SACR 93 (T) held, life imprisonment is the ultimate sentence and should not be imposed lightly. Courts must differentiate between sentences, and where life imprisonment is prescribed, the only way to differentiate is to impose a lesser sentence if the circumstances of the case so demand.

[17] I have carefully considered the factors advanced on behalf of the appellant, both individually and cumulatively.

[18] These factors advanced on behalf of the appellant are:

18.1. The period in custody awaiting trial: The appellant spent 1 year and 8 months in custody. In *S v Mqabhi* 2015 (1) SACR 508 (GJ), it was held that pre-sentence detention is a factor to be weighed with all other mitigating and aggravating factors. It is not to be isolated as an automatic substantial and compelling circumstance. The purpose of the enquiry is to determine whether the effective sentence to be imposed is proportionate to the crime. While this period is a relevant factor, it is not, in the context of this case, a weighty one. There is no suggestion that the delay was attributable to the State's malfeasance. The period is regrettable but not unusual for matters of this seriousness, and it must be viewed against the gravity of the offence.

18.2. The lack of physical injuries: The appellant relied on the decision in *S v SMM* 2013 (2) SACR 292 (SCA), which held that while section 51(3)(aA)(ii) of the CPA Act states that an apparent lack of physical injury shall not be regarded as a substantial and compelling circumstance, a court is not precluded from considering it in conjunction with other factors. However, the facts of this case must be distinguished. In *S v SMM*, and also in *S v Vilakazi*, the lack of injury was one of several factors that contributed to a finding of disproportionality. In *Vilakazi*, for instance, there was no extraneous violence and a condom was used, mitigating the risk of disease or pregnancy. In the present matter, the complainant was only seven years old. The very act of raping a child of that tender age is inherently an act of extreme violence, causing profound physical and psychological harm that cannot be measured solely by the presence of lacerations or bruising. As was powerfully stated by the respondent's counsel, with reference to the Latin word and origin of the word rape ("*raptus*", meaning "to take by force"), every victim of rape suffers psychological damage. In a child of this tender age, that damage is devastating and long-lasting. To place significant weight on the absence of physical injury in such a context would be to ignore the very nature of the crime and its impact on a victim of such extreme vulnerability.

18.3. The appellant's youth, first-offender status, and potential for remorse: The appellant was 22 years old and a first offender. In *S v Salzmann* 2020 (2) SACR 200 (SCA), it was confirmed that a lack of remorse is not an aggravating factor. However, in *S v GO* 2017 JDR 1582 (SCA), it was stated that while a lack of remorse is not aggravating, it is indicative of a failure to take responsibility. In this case, the appellant's position is ambiguous and unpersuasive. He denied the allegations in court, putting the seven-year-old complainant through the trauma of testifying. His subsequent admission to the social worker that he raped the complainant once, while under the influence of drugs, falls short of full acceptance of responsibility, especially given the complainant's testimony of multiple incidents. This partial admission appears self-serving and does not demonstrate genuine remorse or a true appreciation of the wrongfulness of his conduct. While his youth is a factor, it is substantially outweighed by the other circumstances of the offence.

[19] In contrast to the mitigating factors, the aggravating factors in this case are profound. The appellant was convicted of raping a seven-year-old child. As the respondent's argument correctly highlight that the complainant was vulnerable not only because of her age, but because she was entrusted to the appellant's care. He was a family member and a caregiver, and he grossly breached that position of trust for his own gratification. The offence was committed in the family home, a place where the child should have been safest.

[20] The prevalence of such offences against children in our country, as noted in *S v Hadebe and Others* 1997 (2) SACR 641 (SCA), necessitates sentences that reflect the gravity of the crime and serve as a deterrent. While a court must always guard against imposing a sentence that is disproportionate, the facts of this case represent the very paradigm of the worst type of offence which the Legislature sought to address with the prescribed minimum sentence.

[21] This Court was also referred to *S v DJ* 2019 (2) SACR 613 (WCC) and *S v Makatu* 2006 (2) SACR 582 (SCA) regarding the sufficiency of the charge sheet. It was argued that the appellant was charged with and convicted of a single count, and that this should be the only factual basis for sentence.

[22] I find no merit in this argument. The appellant was on trial for a single count of rape. The evidence that emerged during the trial regarding multiple incidents was part of the narrative of that single charge and went to the persistent and predatory nature of the conduct.

[23] The conviction was for the single count as charged. The trial court, in sentencing, was entitled to consider all the evidence before it relating to the circumstances of the offence, including the fact that it was not an isolated incident of momentary lapse but a course of conduct. This does not amount to sentencing the appellant for multiple counts but is a proper evaluation of the gravity of the single count for which he was convicted.

[24] Having weighed all the factors, I am not persuaded that the trial court misdirected itself. The court properly considered the personal circumstances of the appellant and balanced them against the seriousness of the offence, the interests of society, and the particular vulnerability of the victim.

[25] The conclusion that the aggravating factors, individually and collectively, far outweigh the mitigating factors, is one with which I fully agree. To impose any sentence other than life imprisonment for the rape of a seven-year-old child by a trusted adult family member would, in my view, be an injustice and would diminish the seriousness with which society, through its Legislature and courts, view such crimes.

[26] This is not a sentence that induces a sense of shock; rather, it is a sentence that reflects the gravity of the offence and the legitimate outrage of the community. The sentence is proportionate to the crime committed.

[27] In the circumstances, the appeal against sentence cannot succeed.

Order:

The following order is made:

- (i) The appeal against sentence is dismissed.

FMM REID
JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

J. STRIJDOM
JUDGE OF THE HIGH COURT

DATE OF ARGUMENT: 19 FEBRUARY 2026

DATE OF JUDGMENT: 15 APRIL 2026

REPRESENTATIVES

FOR APPELLANT: ADV VAN WYK
LEGAL AID

FOR RESPONDENT: ADV LALANE
OFFICE OF THE NATIONAL PROSECUTING AUTHORITY