

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **A313/2024**

(1)	REPORTABLE: NO YES
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: NO/YES
20/04/2026	
DATE	SIGNATURE

In the matter between:

SIPHOKAZI SHENXANI

Appellant

and

THE STATE

Respondent

Delivery: This judgment has been delivered by uploading it to the Court online digital data base of the Gauteng Division, Pretoria and by email to the attorneys of record of the parties. The date of delivery of the judgment is deemed to be 20 April 2026.

JUDGMENT

MAKHOPA, J

Introduction

[1] On 12 October 2023, the Appellant pleaded guilty on one count of theft of 10x Amalgam gold balls weighing 7.05 kg, valued at R 1 778 731. (One Million Seven Hundred and Seventy-Eight Thousand Seven Hundred and Thirty One Rands).

[2] The Appellant was sentenced to 12 years imprisonment. The appeal is against sentence only.

Background

[3] The Appellant was employed by East Driefontein Mine in Carletonville. On 14 February 2023, the Appellant stole 10x Amalgam gold balls and pleaded guilty to the theft.

Grounds of Appeal

[4] Counsel submitted that the court a quo erred in over-emphasising the seriousness of the offence, the prevalence thereof and the interests of society over the personal circumstances of the appellant.

[5] Counsel further argued that the court a quo did not investigate the availability of an alternative caregiver for the children. The rights of the children were, therefore, violated, in terms of Section 28 of the Constitution. Counsel argued further that, the trial court breached Article 19 of the African Charter on the Rights and Welfare of the child.

[6] Counsel submitted further that 12 years imprisonment is disproportionate to the circumstances of the offence and must be reduced.

[7] Counsel for the respondent asked that the appeal against the sentence be dismissed.

Legal framework and analysis

[8] It is trite that sentence is pre-eminently a matter within the discretion of the trial court. A court on appeal is not at liberty to interfere with the discretion of the trial court on sentence unless it can be demonstrated, on the basis of evidence, that that discretion was not judicially and properly exercised and that as a consequence, misdirection occurred which resulted in the imposition of a sentence that was disproportionate to the offence or shockingly inappropriate.¹

[9] At the trial, the Appellant did not testify in mitigation of sentence. The legal representative placed the mitigating factors of the Appellant on record from the bar.

[10] The Appellant has no previous conviction and was 43 years old when she was sentenced. She had two children, 17 and 7 years old, respectively. The whereabouts of the fathers were unknown.

[11] She was a sole bread winner renting a place to stay. She was prepared to pay a fine.

[12] The offense for which the Appellant has been convicted, falls within the purview of Section 51 of the Criminal Law Amendment Act.² The prescribed minimum sentence in this case is fifteen years imprisonment.

[13] In *S v Malgas*,³ the Supreme Court of Appeal stated ten factors to be considered by the courts in applying minimum sentence legislation and determining whether there are substantial and compelling circumstances that could justify a departure from the prescribed minimum sentence.

[14] The ultimate impact of circumstances relevant to sentencing must be measured against the phrase: substantial and compelling circumstances. All circumstances taken into account when a sentence is meted out must cumulatively justify the minimum sentence to be imposed.⁴

[15] The argument that, the learned magistrate did not take into account the plight of the minor children is incorrect because on page 15 (lines 5-8) of the record, the

¹ See *Director of Public Prosecutions, KZN v P* 2006 (1) SACR 243 (SCA) at para 10.

² Act 105 of 1997.

³ 2001 (1) SACR 469 (SCA) at para 25.

⁴ *Id* at para 25, point G.

learned magistrate is the one who asked for the probation officer's report to address the issue of the children.

[16] On page 25 (lines 18-25) again, the learned magistrate emphasises the importance of the probation officer's report in addressing the issue of the minor children.

[17] In *S v Mhlakaza and Another*,⁵ the court held that:

"The object of sentencing is not to satisfy public opinion but to serve the public interest. A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the court's duty to impose fearlessly an appropriate and fair sentence even if the sentence does not satisfy the public." (references omitted)

[18] In *S v Rabie*,⁶ the court held that "*Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances*".

[19] It should be borne in mind that, the Appellant stole from the employer, which, in itself, is an aggravating factor.

[20] Furthermore, the value of the gold is R 1 778 731.

[21] The learned Magistrate, however, considered all the facts before him and found that there were substantial and compelling circumstances. Thus, he sentenced the Appellant to 12 years imprisonment.

[22] In my view I cannot find fault with the sentence imposed by the learned magistrate.

Order

[23] In the premises, I make the following order:

⁵ 1997 (1) SACR 515 (SCA) at 518E-F.

⁶ 1975 (4) SA 855 (A) at 862G.

1. The appeal against sentence is dismissed.


D MAKHOBA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree, it is so ordered


R TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing : 12 March 2026

Date of Judgment : 20 APRIL 2026

For the appellant : Mr MB Kgagara

Instructed by : Legal Aid South Africa

For the respondent : MJ Nethononda

Instructed by : Director of Public Prosecutions, Pretoria