

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A303/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
28/4/2026	[REDACTED]
DATE	SIGNATURE

In the matter between:

MPHO RAMALEKANE

Appellant

and

THE STATE

Respondent

This judgment was prepared and authored by the Judge whose name is reflected and 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 for handing down is deemed to be 28 April 2026.

JUDGMENT

POTTERILL J

Introduction

[1] The appellant was found guilty on two counts of rape, one count each of assault with intent to do grievous bodily harm and kidnapping. He was sentenced on count 1, rape, to life imprisonment and on the second count of rape to 8 years imprisonment. The counts of kidnapping and assault with intent to do grievous bodily harm were taken together for sentencing purposes and the appellant was sentenced to two years imprisonment. It was ordered that all the sentences run concurrently with the life sentence imposed on count 1.

[2] The appellant is exercising his automatic right to appeal. The appeal lies against the convictions and sentences.

The convictions

[3] Although the appeal lies also against the convictions, counsel for the appellant could not argue that there was a misdirection by the Court a quo in finding the appellant guilty on all four counts. The identity of the appellant was proved and the sexual intercourse with the two complainants was common cause. There were no contradictions in the complainants' versions and the other state witnesses, and the doctors, corroborated the complainants' versions. This Court is satisfied that the appellant was beyond a reasonable doubt guilty of the offences he was charged with.

The sentences

[4] The main argument pertaining to the sentences is that the appellant was subjected to an unfair trial during the sentencing procedure. The reason for this argument is threefold: the pre-sentence report was obtained by the state and not the defence, or by the Court a quo; the pre-sentence report contained information that was detrimental to the appellant and thus inadmissible; the pre-sentence report and the victim impact report was not accepted into evidence by the Court a quo. More fundamental was the misdirection by the Court to take into account the report from the probation officer that the appellant had a previous conviction, whereas no previous convictions were proved by the state.

[5] It is trite that the entrenched right to a fair trial does not come to an end on conviction of the accused. "The right to a fair trial extends up to, and including, sentencing proceedings ..."¹

[6] The ground of appeal that the sentencing process resulted in an unfair trial based on who requested the pre-sentencing report is bad in law. The prosecutor, the defence or the court has the right to request a pre-sentence report. It is bad in law to argue that only the defence or a Court can request such report, the prosecutor most certainly can request such report and it is not detrimental to the administration of justice.² There is a duty on the prosecutor as a servant of justice and representative of the public to see to it that the court is properly informed about both aggravating and mitigating circumstances pertaining to the sentence.

[7] The record confirms that the defence was in possession of both the victim impact report and the pre-sentencing reports before the argument on sentence commenced. The defence did not object to the reports being handed up, or the content thereof. The defence did not request that the probation officer and social worker testify, or for a postponement to obtain their own pre-sentencing report. The legal representative thus accepted the reports and its contents. The reports form part of the record and the mere fact that they do not have exhibit numbers does not render the sentencing procedure unfair. This procedure did not render the sentencing procedure unfair.

[8] The pre-sentencing report was accompanied by an affidavit of Ms Mohlala, the probation officer. The fact that detrimental information is contained in the report does not render the trial unfair. A pre-sentence report would ordinarily include mitigating and aggravating circumstances in properly placing before court all the information that a court needs to come to an appropriate sentence. A victim impact report covers the victim as well disclosing the impact that the offence had on the victim. The sentencing court is with this enabled to impose an informed and properly considered sentence which is well-balanced. This ground of appeal too is to be dismissed as it is bad in law and did not render the trial unfair.

¹ *S v Dzukuda and Others; S v Tshilo* 2000 (2) SACR 443 (CC) par [12]

² *Rammoko v Director of Public Prosecutions* 2003 (1) SACR 200 (SCA)

[9] The Court did in its sentencing judgment refer to the previous conviction of attempted murder. The Court used this to factor in that the appellant had a propensity for violence. The court erred in taking this into account, but this does not render the trial unfair; it is a ground of appeal on misdirection that must be upheld. The appellant must be seen as a first offender because convictions that are not proven or admitted may not be considered when imposing sentence.³

[10] I cannot find that viewing the appellant as a first offender versus a second offender, would have a material impact on the sentences imposed. The main contention of the appellant was that the life sentence should be reduced because of this factor. Furthermore, there was a substantial and compelling circumstance that was ignored; the appellant was in custody for three years awaiting trial. The Court had considered this factor when sentencing on count 4, but did not factor this in when sentencing on count 1.

[11] The circumstances of the rape of these girls under 20 years old is horrific. Not only were they raped, but they were severely physically assaulted and terrified at graveyards. No matter the calls for gender-based violence to stop, this matter illustrates that men still see rape as a power play over women. The public calls for harsh sentences. There is nothing in the personal circumstances of the appellant that is deserving of a deviation from the prescribed sentence on count 1. In terms of section 51 read with Schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended a first offender is not excluded from a sentence of life imprisonment. The three years in awaiting trial was factored in, but cannot be factored in, in a life sentence. The appellant has no remorse and thus no mercy can be factored in.

[12] The appeal against both convictions and sentences are dismissed.


S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

³ *S v Maphaha* 1980 (1) SA 177 (V)

I agree

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F.M.M. REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: A303/2023

HEARD ON: 5 March 2026

FOR THE APPELLANT: MR. R. DU PLESSIS

INSTRUCTED BY: Legal Aid South Africa

FOR THE RESPONDENT: ADV. J.P. CONRADIE

INSTRUCTED BY: Director of Public Prosecutions

DATE OF JUDGMENT: 28 April 2026