



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A304/2024

JUDGMENT HEARD ON: 17 MARCH 2026

JUDGMENT:

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

DATE : 28.04.2026

SIGNATURE

In the matter of:

M[...] N[...] T[...] M[...]

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT

Mzuzu AJ (Strijdom, J concurring)

INTRODUCTION

1. The appellant Mr M[...] N[...] T[...] M[...], appeal to this Court against the sentence of life imprisonment imposed upon him by the Regional Court, Pretoria, on 19 February 2020. 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 an eleven-year-old girl. The appellant was a 46-year-old male. The appellant and the complainant are related, the appellant being the grandfather 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). The appeal is against sentence only.

MATERIAL BACKGROUND FACTS

4. The facts of the matter are largely common cause as the appellant has pleaded guilty.
5. The complainant and her family members came together over the December 2016 holidays and spent Christmas day at the grandparent's home to sleep over. They were about four grandchildren sleeping at the same place. Her grandfather (appellant) came to fetch her from the other children and took her to his bedroom. He started undressing her and had sexual intercourse with her. When he was done, he made her promise not to tell anyone about the incident. She later disclosed the abuse to one of the teachers who then escalated the information until it reached her mother.
6. The appellant has pleaded guilty. However, during the pre-sentence investigation with a social worker, he stated that the incident was a mutual agreement between him and the victim.

LEGAL ARGUMENTS

7. The appellant's grounds of appeal centred on the contention that the trial Court erred in not finding substantial and/or 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 pleaded guilty and took responsibility and showed remorse;
 - 8.2 the appellant was 46 years old, married, and the father of two children aged 22 and 13;
 - 8.3 he was not employed and received a disability grant due to a medical disability (hypertension), he was not in good health and was in a program to undergo heart surgery;

- 8.4 the fact that the State entered into a previous section 105(A) of the CPA plea bargain, and after consulting with the victim and her family, agreed to a sentence of 15 years direct imprisonment;
9. It was submitted by the respondent that the following factors can be regarded as aggravating factors:
- 9.1 the appellant is not a first offender for a sexual offence involving a child;
 - 9.2 the offence is prevalent, the complainant was helpless and considered a vulnerable member of society, the appellant is the victim's grandfather;
 - 9.3 the appellant has betrayed the inherent trust relationship that existed between himself and the complainant as a relative;
 - 9.4 the appellant has caused the victim psychological trauma and the incident affected more than just the victim but also her mother and grandmother;
 - 9.5 the complainant feels that her life has been thrown away as the incident has altered her emotional wellbeing;
 - 9.6 the incident has divided the family;
 - 9.7 nothing can be said to have contributed to the appellant having committed the offence save to say it was a deliberate act of self-pleasure and gratification at the expense of the well-hood and wellbeing of a young innocent child;
 - 9.8 the appellant has violated the complainant's constitutional right to privacy and to bodily integrity and has traumatised the victim.

LEGAL PRINCIPLES

10. The principles governing an appeal against sentence are well established. Sentencing is pre-eminently a matter for the discretion of the trial court.
11. 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.¹
12. 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.

¹ See *v Rabie* 1975 (4) SA 855 (A) and *S v Packereysammy* 2004 (2) SACR 169 (SCA)

13. 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, read with Part 1 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**². A court is required to apply its mind to the question of whether the prescribed sentence is proportionate to the particular offence.
14. 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**³ 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.⁴
15. In **S v Ntsheno, S v Dlamini, S v R**⁵ the Court was of the view that substantial and compelling factors are all the factors taken in account in sentencing or all everyday factors.
16. In contrast to the mitigating factors, the aggravating factors in this case are profound. The appellant was convicted of raping an eleven-year-old child as the respondent's argument correctly highlight that the complainant was vulnerable. He was a family member (grandfather) and he grossly breached that position of trust for his own gratification. The offence was committed in a family home, a place where the child should have been safest.
17. The prevalence of such offences against children in our country as noted in **S v Hadebe and Others**⁶ 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 which the legislature sought to address with the prescribed minimum sentence.
18. Having weighed all the factors, I am not persuaded that the trial Court misdirected itself. The trial Court properly considered the personal

² 2009 (1) SACR 552 (SCA)

³ 2010 (1) SACR 93 (T)

⁴ See also **S v Malgas** 2001 (1) SACR 469 (SCA)

⁵ 2010 (1) SACR (GS)

⁶ 1997 (2) SACR 641 (SCA)

circumstances of the appellant and balanced them against the seriousness of the offence, the interests of society, and the vulnerability of the victim.

19. The conclusion that the aggravating factors individually and collectively, far outweigh the mitigating factors, is one with which I agree. To impose any sentence other than life imprisonment for the rape of an eleven-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.

20. 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.

21. In the circumstances, the appeal against sentence cannot succeed.

ORDER:

(1) The appeal against sentence is dismissed.

I agree and it is so ordered.

BN MZUZU
ACTING JUDGE OF
THE HIGH COURT,
PRETORIA

STRIJDOM J
JUDGE OF THE HIGH
COURT, PRETORIA

APPEARANCES:

For the appellant:	Adv. S Simpson
Instructed by:	Legal Aid SA
For the respondent:	Adv. E Mafunisa
Instructed by:	Office of the National Prosecuting Authority