IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: A95/2025

In the matter between:

SILINDILE MBOTSHELWA	**FIRST APPELLANT**
MOSIUWA ISSAC NKWE	**SECOND APPELLANT**
PAKISO DAVID MOLETE	**THIRD APPELLANT**
PULE EDWARD MATSOLO	**FORTH APPELLANT**

and

THE STATE	**RESPONDENT**

Neutral citation: *Mbotshelwa and Others v The State* (A95/2025) [2026] ZAFSHC 327 (5 June 2026)

Coram: VAN ZYL J *et* CHESIWE J

Heard: 2 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 05 June 2026.

Summary: Criminal law and procedure – appeal against sentence and conviction – circumstances to not warrant deviation from minimum sentence – sentence confirmed and appeal dismissed.

ORDER

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1 The appeal against conviction and sentence is dismissed.

2 The conviction and sentence imposed by the trial court are confirmed.

JUDGMENT

Chesiwe J (with Van Zyl J concurring)

Introduction

[1] The appellants (accused 1, 2, 3 and 4 at the criminal trial) were convicted in the Regional Magistrate court held in Theunissen of murder, read with the provisions of s 51(1) and part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1977. The appellants were sentence to life imprisonment on 25 March 2025.

[2] The appellants have an automatic right to appeal a sentence of life imprisonment. The appellants were legally represented at the trial court. The appeal lies against conviction and sentence. The issue is whether the appellants are the perpetrators who murdered the deceased and if their identification was proven beyond reasonable doubt by the respondent at the trial court.

[3] The appellants listed their grounds of appeal in the notice of appeal contending that the court *a quo* erred in the conviction as their identity was not proven beyond reasonable doubt by the state. On sentence, the appellants contended that the sentence was harsh and inappropriate and that the court *a quo* failed to take into consideration their personal circumstances as substantial and compelling to deviate from the prescribed minimum sentence.

Background

[4] The background of this matter, briefly, is that: On 2 November 2020, around 21:00 the evening, the first state witness, one Eddie Seage (Eddie) and the deceased (Paulus

Khulele Plaaitjie) were walking home from a shop, when they were approached by the appellants. The second appellant brandished a sharp object and stabbed the deceased in his shoulder. The deceased managed to run away from the appellants but all four appellants pursued the deceased. The deceased ran into someone's yard while Eddie fled as he was scared that the appellants will also attack him. Having successfully escaped, he saw nothing else that transpired.

[5] Mr Van der Merwe, on behalf of the appellants in oral submission, stated that the version of the state witness could not be faulted and that the second state witness corroborated the evidence of the first state witness. Therefore, the court did not commit any misdirection. In respect of sentence, he submitted that the appellants were young and in light hereof, the court ought to reduce the sentence of life imprisonment to one ranging around 20-22 years.

[6] Adv Tunzi, on behalf of the respondent, submitted in oral argument that she stood by her written heads of argument. She maintained that the trial court dealt thoroughly with the evidence on conviction. In respect of sentence, she disputed that the appellants were young and maintained that the trial court dealt with that aspect thoroughly and properly. She submitted that the appeal against conviction and sentence ought to be dismissed.

Conviction

[7] The transcribed record reflects that Eddie directly identified the four appellants and placed them at the scene on the night when the deceased was killed. He explained that he knew the appellants and that they had threatened the deceased a few days prior to the commission of the crime. He witnessed when appellant two (accused 2 in the trial court) stabbed the deceased and confirmed that the deceased and the appellants were members of rival gangs. The second state witness, one Thekiso, corroborated Eddie's evidence and placed appellants 1 and 2 at the scene of the crime.

[8] Therefore, the issue of the identities of the appellants was correctly decided by the trial court. The trial court did not err in finding that the appellants were the perpetrators that murdered the deceased. Eddie was honest in clearly stating that he saw appellant 2 stabbing the deceased. He also saw that all appellants had weapons on them. Based on the post-mortem report, the deceased passed away on account of no less than 10 stab wounds.

[9] It is trite law that the evidence concerning identity must be considered with caution. Reliability on identification depends on various factors.[1] The appeal court's powers to, therefore, interfere with the findings of the trial court on credibility is limited.[2]

[10] The issue surrounding the identity of the appellants was settled by the trial court. The trial court's evaluation of the evidence demonstrates that it was alive to the fact that the state witnesses were reliable and truthful and had no reason to falsely implicate the appellants. The trial court cannot be faulted in respect of identity of the appellants. The state proved the identity of the appellants at the trial court and did so beyond reasonable doubt. Clearly, therefore, the trial court evaluated all the evidence in *toto* and its findings cannot be faulted.

[11] The trial court correctly found the appellants to be untruthful witnesses and correctly rejected their version as false beyond reasonable doubt. Therefore, the conviction stands and the appeal in this regard must fail.

Sentence

[12] As regards sentence, it is trite that a court with appellate jurisdiction has limited powers to interfere with the sentence imposed by the trial court. The sentencing discretion lies with the trial court and its sentence will only be interfered with on appeal if the discretion in question was not exercised judicially and properly,[3] or if there is disparity between the sentence imposed and the one that ought to be imposed. In *S v Malgas*[4] the court stated as follows:

'A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate court is at large. However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the

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[1] *S v Mthethwa* 1972 (3) SA 766 (A).
[2] *S v Francis* 1991 (2) SACR 198 (A) at 204C-E.
[3] *S v Rabie 1975 (4) SA 875 (A).*
[4] *S v Malgas* 2001 (1) SACR 469 (SCA).

trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate" It must be emphasised that in the latter situation the appellate court is not at large in the sense in which it is at large in the former. In the latter situation it may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may do so only where the difference is so substantial that it attracts epithets of the kind I have mentioned.'[5]

[13] It is evident from the record that the trial court properly considered the 'sentencing triad' as expounded in *S v Zinn*.[6] The appellants' personal circumstances were considered by the trial court, and their circumstances were not exceptional; the trial court considered that the first appellant was a first offender. It is trite that no previous convictions necessarily qualify as substantial and compelling circumstances. The court, in respect of the first appellant, considered all the evidence including mitigating and aggravating factors.

[14] The second, third and fourth appellants each had several previous convictions of violent crimes. The court considered the circumstances of the second appellant, namely that he was imprisoned for a short period, but that it had no rehabilitative effect on him. The third and fourth appellants were in the same predicament as the first appellant. Ultimately, the aggravating factor is that the offence the appellants were convicted of, was so brutal and merciless, that according to the pathologist's post-mortem report, 10 stab wounds had been inflicted on the deceased. The deceased frantically attempted to flee by running away. However, the appellants were so intent on murdering the deceased that he never managed to elude them.

[15] With regards to time spent in custody, namely a period of four years and five months, the court correctly found that such period cannot stand alone as substantial and compelling circumstances warranting deviation from the minimum sentence. The delays of the trial were indeed not caused by the appellants. However, the record reflects that at some stage the state witnesses were unavailable and the second appellant made a s 49*(g)* application in terms of the Criminal Procedure Act 51 of 1977. Furthermore, the

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[5] Ibid para 12.
[6] *S v Zinn* 1969 (2) SA 537 (A).

court correctly found that, simply, the aggravating circumstances overshadowed the mitigating factors.

[16] Therefore, the brutal and merciless manner in which the deceased was killed outweighs the appellants' personal circumstance. It was raised during the trial that the appellants had threatened the deceased previously, which prompted the trial court to conclude that the murder was premeditated. The state witness' evidence was clear: the deceased and the appellants were members of rival gangs, and the court was well-equipped in dealing with these kinds of cases on regular basis.

[17] The trial court was thorough in its judgement and dealt with all the issues comprehensibly and thoroughly. It started by pointing out that it was bound to evaluate all the evidence before it as a unit, and detailed each and every witness's testimony, including the evidence of the appellants. The trial court correctly concluded that there were no compelling and substantial circumstances warranting deviation from the imposition of the prescribed sentence. The aggravating factors far outweighed the mitigating factors.

[18] Having considered all these circumstances, I am satisfied that the trial court did not misdirect itself in sentencing the appellants to life imprisonment in respect of the murder charges. Therefore, this Court will not tamper with the imposed sentence of all four appellants.

[19] In the result, the following order is granted:

1 The appeal against conviction and sentence is dismissed.

2 The conviction and sentence imposed by the trial court are confirmed.

[redacted]

pp **S CHESIWE**

JUDGE OF THE HIGH COURT

I concur.

C VAN ZYL

JUDGE OF THE HIGH COURT

Appearance

On behalf of appellants:	P Van Der Merwe
Instructed by:	Legal Aid
	Bloemfontein

On behalf of respondent:	S Tunzi
Instructed by:	The Director of Public Prosecutions
	Bloemfontein