



**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, MAKHANDA  
(CIRCUIT COURT HELD AT KOMANI)**

**NOT REPORTABLE**

Case no: CC16/2026

In the matter between:

**THE STATE**

and

**SIPHUMEZE SPIRES**

**Accused**

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**JUDGMENT ON SENTENCE**

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**Govindjee J**

**Background**

[1] Mr Spires was convicted of a charge of rape. He unlawfully and intentionally committed an act of sexual penetration with an eleven-year-old female complainant by inserting his penis into her vagina without her consent during March 2025.

[2] Given the age of the complainant, the offence falls within Part I of Schedule 2 of the Criminal Law Amendment Act, 1997,<sup>1</sup> attracting a minimum sentence of life imprisonment unless substantial and compelling circumstances exist to justify the imposition of a lesser sentence.

[3] It is useful to reiterate established sentencing principles, which I extract from this court's judgment in *Botha*.<sup>2</sup> Section 276 of the Criminal Procedure Act, 1977<sup>3</sup> provides for the sentences which courts can impose. The imposition of sentence is pre-eminently a matter for the discretion of the trial court, which is free to impose whatever sentence it deems appropriate provided it exercises its discretion judicially and properly. The general purpose of imposing a sentence is fourfold: retributive, preventative, rehabilitative (reformative) and to act as a general deterrent.<sup>4</sup> While the retributive aspect tends to dominate, courts are enjoined to temper the punishment with a measure of mercy.<sup>5</sup>

[4] The sentencing court must attempt to achieve a balance in its sentence, and not approach its task in a spirit of anger, but in one of equity. Hastiness, the striving after severity and misplaced pity are out of place, as are so-called exemplary sentences designed to use the crime to set an example for others in society.<sup>6</sup> Still, more serious cases clearly require severity, with a certain moderation of generosity, for the appropriate balance to be struck. The object of sentencing is not to satisfy public opinion, but to serve the public interest.<sup>7</sup>

[5] In the final analysis, the well-known triad of factors to be considered consists of the crime, the offender and the interests of society,<sup>8</sup> and these factors must be applied, in accordance with *S v Malgas*,<sup>9</sup> to consider whether substantial and

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<sup>1</sup> Act 105 of 1997 ('the Minimum Sentences Act').

<sup>2</sup> *S v Botha* [2023] ZAECMKHC 52 paras 3–5.

<sup>3</sup> Act 51 of 1977 ('the CPA').

<sup>4</sup> *S v Rabie* 1975 (4) SA 855 (A).

<sup>5</sup> *Rabie* at 862G-H.

<sup>6</sup> See *S v Khulu* 1975 (2) SA 518 (N) 521-522.

<sup>7</sup> *S v Mhlakhaza and Another* [1997] 2 All SA 185 (A) at 189. Also see *S v M* (Centre for Child Law as *amicus curiae*) 2007 (2) SACR 539 (CC).

<sup>8</sup> *S v Zinn* [1969] 3 All SA 57 (A) at 540G-H.

<sup>9</sup> 2001 (1) SACR 469 (SCA).

compelling circumstances exist to deviate from any prescribed minimum sentence.<sup>10</sup>

### **Nature of the crime and surrounding circumstances**

[6] The complainant was raped by Mr Spires after birthday celebrations at a residence in Dordrecht, while she was sleeping. The complainant's uncle, AG, was in a relationship with the accused's aunt, TS. The rape was painful, causing the complainant to cry. As counsel for the State emphasised, the evidence during the trial reflected the complainant's immediate distress and pain: VK observed that the complainant was crying, in pain and experiencing difficulty walking when she took her to report the matter, and Dr Pienaar observed that the complainant was distressed and experiencing pain and discomfort when examined on the second day following the incident.

[7] It goes without saying that the court must consider the effect of the crime on the victim, particularly in cases of gender-based violence.<sup>11</sup> The child was extremely young at the time she was raped and forced to experience a gross violation of her person. The impact on the rest of her life, including the abrupt termination of her innocence as a child, is difficult to comprehend or put into words. The SCA has endorsed academic commentary that posits that, 'irrespective of the presence of physical injuries or lack thereof, rape always causes its victims severe harm'.<sup>12</sup> That said, the court has not been furnished with a victim impact statement or other specialist report detailing the likely future impact of the crime on the complainant.<sup>13</sup>

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<sup>10</sup> See *Radebe v The State* [2019] ZAGPPHC 406 at para 12. In *S v Matyityi* 2011 (1) SACR 40 (SCA) para 23, Ponnar JA held that Parliament:

'...has ordained minimum sentences for certain specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts...and ill-founded hypotheses that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, [are] foundational to the rule of law which lies at the heart of our constitutional order'.

<sup>11</sup> See A Spies 'The judicial relevance and impact of victim impact statements in the sentencing of rape offenders' (2018) SACJ 212 at 231 as cited in *S v Dyonase* [2020] ZAWCHC 137 para 21.

<sup>12</sup> *M v The State* [2022] ZASCA 3 para 47.

<sup>13</sup> See s 274 of the CPA. I have specifically considered whether a probation officer's report and victim impact statement might aid the enquiry and, having canvassed these matters with counsel, have determined that this is unnecessary in the circumstances. Also see *S v EN* 2014 (1) SACR 198 (SCA); [2012] ZASCA 148 para 14.

### **Mr Spires's circumstances and interests**

[8] *Mr Solani* placed Mr Spires's personal circumstances before court. Significantly, he was 19 at the time of the incident and has no previous convictions. The accused left school in grade 9. He was employed as a farm worker performing odd jobs and earned R1000 per week, from which he contributed to the upkeep of his two children, who are aged 1 and 3. The accused's parents are alive, and he resides in Dordrecht with his grandmother. There being no contestation to the statements made from the bar by *Mr Solani*, the court accepted these submissions to carry the same weight as facts presented under oath.<sup>14</sup>

### **The interests of society**

[9] Courts have repeatedly reflected on the horrific nature of the offence of rape, given that it constitutes a humiliating, degrading and brutal invasion of the privacy, dignity and person of the victim. As such, it has been accepted that the crime deserves severe punishment.<sup>15</sup>

[10] The SCA has emphasised that courts cannot ignore the reality that South Africa is facing a pandemic of sexual violence against women and children.<sup>16</sup> In *S v Vilakazi*,<sup>17</sup> the SCA confirmed that rape is a repulsive crime. Society expects that the scourge of gender-based violence must be addressed and must cease. In addition, children's rights are constitutionally protected, and rape of a child, particularly one as young as eleven years of age, is by its nature one of the worst kinds of offences imaginable.

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<sup>14</sup> *S v Cele* 2026 (1) SACR 445 para 11.

<sup>15</sup> *S v Chapman* 1997 (2) SACR 3 (SCA) at 5B. When imposing a sentence in respect of the offence of rape, an apparent lack of physical injury to the complainant and any relationship between the complainant and accused prior to the offence being committed are not, on their own, considered to be substantial and compelling circumstances justifying the imposition of a lesser sentence: section 51(3)(aA) of the Minimum Sentences Act. *Radebe supra* para 34. In *S v Vilakazi* [2008] ZASCA 87 para 54, Nugent JA noted that 'there comes a stage at which the maximum sentence is proportionate to an offence and the fact that the same sentence will be attracted by an even greater horror means only that the law can offer nothing more.'

<sup>16</sup> *The Director of Public Prosecutions, Grahamstown v TM* 2020 JDR 0652 (SCA) (*TM*) para 15.

<sup>17</sup> 2009 (1) SACR 552 (SCA) at 555h.

[11] The Minimum Sentences Act has drastically impacted upon the exercise of a court's discretion in imposing a sentence through the introduction of a prescribed, albeit discretionary minimum sentence regime.<sup>18</sup> Regrettably, that legislation seems to have achieved little in respect of stemming the shocking number of child rape cases that are prevalent in this Division. This court has previously acknowledged that society's patience, understandably, is wearing thin, and sentences imposed in child rape cases are rightly scrutinised.

[12] Mr Spires's conduct has been found to fall within the purview of this Act. A court should not for 'flimsy reasons' and 'speculative hypotheses favourable to the offender' deviate from the minimum sentence prescribed or apply their personal notion of fairness.<sup>19</sup> The fact that Mr Spires is a first offender does not, on its own, necessarily warrant a lesser sentence. The question remains whether there are substantial and compelling reasons, on the whole, to justify a lesser sentence than the minimum sentence prescribed.

## **Analysis**

### ***Substantial and compelling circumstances?***

[13] This court is duty bound to consider Mr Spires's personal circumstances, as well as that of the young complainant. The nature of the crime must also be considered, together with the interests of society, seasoned with a measure of mercy and bearing in mind the various purposes of punishment, including prevention, retribution, rehabilitation and deterrence.<sup>20</sup> All the circumstances of the case must be considered to determine whether the imposition of a minimum life sentence is proportionate to the particular offence.<sup>21</sup> The constitutional value of human dignity lies at the heart of this requirement.<sup>22</sup>

[14] Life sentences are undoubtedly appropriate sentences, in general terms, to impose upon criminals who rape children. The rape of vulnerable victims, including young children, has always been an aggravating feature of rape. Every child is

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<sup>18</sup> *S v September* [2014] ZAECGHC 38 para 8.

<sup>19</sup> *S v PB 2011 (1) SACR 448 (SCA) para 21; Matyityi supra para 23.*

<sup>20</sup> *S v Genever and Others 2008 (2) SACR 117 (C) at 122c-d.*

<sup>21</sup> *Vilakazi supra para 15.*

<sup>22</sup> *S v Dodo 2001 (3) SA 382 (CC) para 38.*

meant to enjoy the constitutional rights to be protected from maltreatment, abuse and degradation, to freedom and security, which includes the right to be free from all forms of violence and to have their privacy and dignity respected and protected.<sup>23</sup> The effect on the complainant has already been described. In *S v Zitha*, Goldstein J commented on the need to punish perpetrators of child rape as heavily and severely as the law allowed in the absence of substantial and compelling circumstances dictating otherwise. This court has previously noted that it will not shirk this responsibility, however agonising it may be to do so.<sup>24</sup>

[15] It is, however, important to consider the various circumstances cumulatively, and with specific focus on Mr Spires's clean record and youthfulness at the time. I note his low level of education, his lack of independence and his low level of income. I am also cognisant that a finding of an absence of substantial and compelling circumstances will result in the gravest of sentences being passed and that the consequences of this are profound, effectively removing an individual from society.<sup>25</sup> This will also impact on the lives of his children. It has been noted previously that this requires a meticulous weighing of all relevant factors before a decision to impose it can be justified.<sup>26</sup>

[16] The factors relied upon by Mr Spires as substantial and compelling have been considered in their totality. The main factors in his favour are that he is a youthful first offender. Other factors, including that the rape was carried out seemingly spontaneously and opportunistically on a single occasion, carry less weight when given proper consideration. His level of education, although low, is not unusual and there is no basis for suggesting any remorse.

[17] The fact that a prescribed sentence is considered disproportionate is itself a basis to find that there are substantial and compelling circumstances to warrant a departure from a prescribed sentence.<sup>27</sup> The question remains whether it is the

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<sup>23</sup> Ss 28(1)(d), 12(1)(c) 14 and 10 of the Constitution of the Republic of South Africa, 1996.

<sup>24</sup> *S v Zitha* 1999 (2) SACR 404 (WLD) at 418*h-l*, as quoted in *S v B* [2022] ZAECGHC 12 para 18.

<sup>25</sup> *S v Bull* 2001 (2) SACR 681 (SCA) para 21.

<sup>26</sup> *S v Dodo* 2001 (1) SACR 301 (E).

<sup>27</sup> See *S v Weideman* [2014] ZAECPEHC 62 paras 7, 14: 'Life imprisonment is the most severe sentence that can be imposed by a court. For this reason it is, generally speaking, reserved for the

appropriate sentence in this instance. Considering all the relevant considerations, I consider the circumstances to be weighty enough to warrant departure from the prescribed minimum, and hold that there is genuine prospect of Mr Spires's rehabilitation and his eventual reintegration into society. Consistent with this court's decision in *Botha*, and in accordance with both counsel's submissions, it would, in my view, be unjust and disproportionate to impose a life sentence on Mr Spires given the totality of circumstances, in particular his clean record and age at the time of the offence. These circumstances are entered into the record as substantial and compelling on the facts of this case.<sup>28</sup>

### ***An appropriate sentence***

[18] The court is now enjoined to consider an appropriate sentence and must exercise a reasoned discretion in evaluating the various relevant factors highlighted above to arrive at a proportionate outcome. Courts have frequently acknowledged that the task is a complex and onerous one, involving various competing considerations. The requirement of proportionality applies equally in relation to cases where sentences have been prescribed by legislation.<sup>29</sup> It cannot be ignored that gender-based violence, including child rape, continues to devastate lives and negatively impact upon families and communities. Sadly, many women, including children, live in constant fear of precisely this type of occurrence. The remarks of the court in *S v Ro and Another*<sup>30</sup> are apposite:

'The moral reprehensibility of rape and society's abhorrence of this rampant scourge are unquestioned. The most cursory scrutiny of our law reports bears testimony to the fact that our courts have, rightly so, visited this offence with severe penalties. This reprehensibility and abhorrence are so much more pronounced in the instances of the rape of very young children, as is the case here. ... [T]he complainant was an innocent, defenceless and vulnerable victim.'

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most serious and egregious criminal acts. It is also reserved for those instances where the criminal poses a clear and present danger to the society and where there is little or no prospect of rehabilitation of the criminal and reintegration of that individual into society. This does not however mean that a court should keep something in reserve on the basis that some more serious manifestation of the crime can be imagined. It means only that the sentence of life imprisonment must be proportionate to the nature of crime for which it is imposed.'

<sup>28</sup> Cf *TM op cit* para 12.

<sup>29</sup> *S v Fatyi* 2001 (1) SACR 485 (SCA) at 488f-g.

<sup>30</sup> *S v Ro and Another* 2010 (2) SACR 248 (SCA) para 15.

[19] Given the circumstances, a lengthy sentence of direct imprisonment is unquestionably warranted.<sup>31</sup> But each situation is different and the nuances of the various considerations must be weighed. In coming to a decision, I accept that Mr Spires is a young man who committed a single, grave and despicable offence, for which he has expressed no remorse.<sup>32</sup> He has never previously fallen foul of the law. The offence he committed is by its nature extremely serious and involved gender-based violence. The incident occurred away from the child's home and Mr Spires held no position of trust similar to cases which have considered this as an aggravating feature.<sup>33</sup> On the evidence, there was also no threat or other additional violent conduct after the incident. That does not reduce the seriousness of the offence, but it is relevant when considering proportionality. Regrettably, no imposition of punishment on the offender will restore what has been taken from the victim.

[20] Balancing the various considerations in the light of all the circumstances, I consider a sentence of 17 years' imprisonment to be appropriate. This is a very lengthy sentence of direct imprisonment. It gives Mr Spires some opportunity to rehabilitate, while punishing him heavily for his conduct and the harm he has caused to the complainant and to society. Given the nature of the offence, various other consequences emanating from legislation follow. These have been included as part of the order.

[21] In terms of s 299A of the CPA, the complainant, or her parent or guardian if present, is informed of the right, subject to the directives issued by the Commissioner of Correctional Services, to make representations and to attend any relevant meeting of the parole board when placement of the accused on parole, day parole or under correctional supervision is considered.

## **Order**

[22] The following sentence is imposed:

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<sup>31</sup> See *Seedat v S* [2016] ZASCA 153 para 38 *et seq*, on the efficacy of restorative justice as an inappropriate sentencing option in cases involving serious offences.

<sup>32</sup> See *Weideman* *op cit* para 13.

<sup>33</sup> *M v The State* [2022] ZASCA 3 para 53.

1. The accused, Siphumeze Spires, is sentenced to 17 years' imprisonment in respect of the conviction of rape involving an eleven-year-old child.
2. In terms of section 50(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, the particulars of the accused, as a convicted sexual offender, must be included in the National Register for Sex Offenders.
3. In terms of section 120(4) of the Children's Act 38 of 2005 and section 41 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, the accused is declared to be unsuitable to work with children, and it is directed that his particulars be entered in Part B of the National Child Protection Register.
4. In terms of section 103(1) of the Firearms Control Act 60 of 2000, the accused is declared unfit to possess a firearm.

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**A. GOVINDJEE**  
**JUDGE OF THE HIGH COURT**

**Heard:** 3 June 2026

**Delivered:** 3 June 2026

Appearances:

Counsel for the State: Mr Mqeke

Instructed by: Director of Public Prosecutions  
Makhanda

Attorney for the Accused: Mr Solani

Instructed by: Legal Aid South Africa  
Makhanda