REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: A268/25

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 29 May 2026 E van der Schyff

In the matter between:

RICHARD LINDA KHUMALO **APPELLANT**

And

THE STATE

RESPONDENT

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT

VAN DER SCHYFF J

Introduction

[1] The appellant, Richard Linda Khumalo, was convicted on 4 April 2025 in the Regional Court for the Regional Division of Gauteng, held at Nigel, before Magistrate Mweli, on one count of rape of a minor. The charge was read with the provisions of section 51 of the Criminal Law Amendment Act 105 of 1997. He pleaded guilty to the charge, and a

statement in terms of section 112(2) of the Criminal Procedure Act 51 of 1977 was read into the record.

[2] On 14 August 2025, the appellant was sentenced to life imprisonment. He was further declared unfit to possess a licensed firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000, and his name was entered into the National Register for Sex Offenders in terms of section 50(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

[3] The court *a quo* was informed, and the record confirms, that the appellant was at all material times aware that the charge carried a prescribed minimum sentence of life imprisonment under Part I of Schedule 2 to Act 105 of 1997. The prosecutor expressly placed this on record, and it was confirmed by the appellant's legal representative. Notwithstanding this knowledge, the appellant entered his guilty plea in terms of section 112(2) of Act 51 of 1977.

[4] The appellant appeals against the sentence only, exercising his automatic right of appeal in terms of section 10 of the Judicial Matters Amendment Act 42 of 2013. He is represented in this appeal by Legal Aid South Africa. The respondent is represented by the Office of the Director of Public Prosecutions, Gauteng Division.

Common cause facts

[5] The following facts are common cause between the parties. When the appellant committed the offence, he was 33 years of age and unmarried. He was in gainful employment at JJF Constructions, earning approximately R8 000.00 per month, and was financially contributing to the maintenance of his three minor children, aged 8, 10 and 13 years respectively. He was a first offender. At the time of the commission of the offence, he had consumed alcohol and was using drugs. He spent one year and six months in pre-trial custody. By entering a guilty plea, he spared the minor complainant the secondary trauma of having to testify and relive the ordeal in open court. However, conclusive DNA evidence linked the appellant to the crime.

[6] The aggravating circumstances considered by the court *a quo* included the following: the profound and lasting disruption caused to the life of the child victim; and the continuous psychological trauma suffered by the victim's mother.

[7] Having considered all mitigating and aggravating circumstances, the court *a quo* found that the aggravating circumstances outweighed the mitigating circumstances and that no substantial and compelling circumstances existed to justify a departure from the prescribed minimum sentence. Life imprisonment was accordingly imposed.

The parties' contentions

[8] On behalf of the appellant, it is submitted that the trial court erred in failing to find that the cumulative effect of the mitigating factors constituted substantial and compelling circumstances justifying a departure from the prescribed minimum sentence.

[9] In the alternative, it is submitted that even if the individual factors do not collectively constitute substantial and compelling circumstances, the sentence of life imprisonment is in any event disproportionate to the facts of this particular offence, and that such disproportionality itself constitutes a substantial and compelling circumstance.

[10] The appellant further contends that the trial court placed excessive weight on the seriousness of the offence and the interests of society, to the detriment of the appellant's personal circumstances, resulting in a sentence that is shockingly harsh. It is argued that life imprisonment is the ultimate sentence available and must not be imposed lightly:

[11] The appellant relies on the following comparative authorities: (a) in *S v MN* 2011 (1) SACR 286 (ECG), and in *S v MM; S v JS; S v JV* 2011 (1) SACR 510 (GNP). The appellant contends that the court did not put any weight to the time period that the applicant has spent in custody awaiting trial.

[12] On behalf of the State, it is submitted that the imposition of sentence is pre-eminently a matter within the discretion of the sentencing court. A court of appeal may interfere only where it is satisfied that the trial court's discretion was not properly and judicially exercised.

[13] Relying on *S v Pillay*,[1] the respondent submits that a mere misdirection is insufficient to warrant appellate interference; the misdirection must be of such a nature, degree or seriousness as to show that the court did not exercise its discretion at all, or exercised it improperly or unreasonably.

[14] The respondent further submits that the court *a quo* properly considered all three sentencing considerations: the seriousness of the offence, the personal circumstances of the appellant, and the interests of society, and committed no irregularity or misdirection. The aggravating circumstances outweighed the mitigating circumstances, and the sentence of life imprisonment was appropriate in the circumstances.

[15] In particular, the respondent emphasises that the guilty plea must be assessed in proper context: the appellant knew from the outset, having been expressly informed by the prosecutor and confirmed by his own counsel, that he faced a prescribed minimum sentence of life imprisonment. Furthermore, although the appellant raised alcohol consumption as a mitigating factor, he himself admitted in his section 112(2) statement that he nevertheless knew the difference between right and wrong at all material times, which significantly diminishes the mitigating weight of his intoxication.

Applicable legal principles as to when a court of appeal can interfere

[16] The principles governing appellate interference with sentence are well settled. The power of a court of appeal to interfere with a sentence imposed by a trial court is limited. Sentencing is pre-eminently a matter falling within the discretion of the court that heard the matter. An appellate court is not entitled to set aside a sentence simply because it would have imposed a different one.

[17] As was stated in *S v Anderson* a sentence will not be altered on appeal merely because it would have exercised that discretion differently.[2] A sentence will not be altered unless it is held that no reasonable man ought to have imposed such a sentence, or that the sentence is out of all proportion to the gravity of the offence, or that it induces a sense

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[1] 1977 (4) SA 531 (A) at 535E–F.

[2] 1964 (3) SA 494 (AD) at 494.

of shock or outrage, or that the sentence is grossly excessive, or that there was an improper exercise of discretion by the trial court, or that the interests of justice require intervention.[3] A misdirection warranting appellate intervention must be of such a nature, degree or seriousness that it shows, directly or inferentially, that the court failed to exercise its discretion at all, or exercised it improperly or unreasonably. A mere error in the weighing of factors, without more, does not suffice.[4]

[18] In *S v Malgas*[5] the Supreme Court of Appeal confirmed that the prescribed minimum sentencing regime under Act 105 of 1997 fundamentally altered the prior approach to sentencing in cases to which it applies. A court is not free to depart from the prescribed minimum sentence merely because it considers a lesser sentence appropriate. Substantial and compelling circumstances must exist before such a departure is warranted. In undertaking this enquiry, the court must consider all relevant circumstances cumulatively and must be satisfied that they are truly substantial and compelling.

[19] In *S v Vilakazi*[6] the Supreme Court of Appeal makes clear that the prescribed sentence is not reserved exclusively for the rarest conceivable category of cases, but the sentencing court must nevertheless undertake a proportionality enquiry based on the facts of the individual matter.[7]

Consideration and analysis

[20] We turn to consider whether the court *a quo* committed any misdirection warranting intervention, and whether the cumulative mitigating factors amount to substantial and compelling circumstances justifying a departure from the prescribed minimum sentence.

[21] While a guilty plea is always a mitigating factor, and it undeniably spared the complainant the further ordeal of giving evidence, it must be accorded its proper weight in

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[3] 495C-E. Also see *S v Monyane and Others* 2008 (1) SACR 543 (SCA).

[4] *S v Pillay* 1977 (4) SA 531 (A) at 535E–F

[5] 2001 (1) SACR 469 (SCA).

[6] 2009 (1) SACR 552 (SCA).

[7] At para 54.

context. It is difficult to ascribe great weight to the guilty plea as a mitigating factor in circumstances where the record discloses that the DNA evidence against the appellant was overwhelming.

[22] While the appellant expressed remorse, it must be assessed against the objective facts and the conduct of the accused. On the facts before the court, the evidence of remorse extended no further than a statement to that effect, which is insufficient to give it substantial mitigating weight.

[23] The appellant related to the social worker that at the time of the incident, he was under the influence of liquor. However, a critical concession appears in the appellant's own section 112(2) statement: he admitted that at all material times he knew the difference between right and wrong. This admission significantly undermines the mitigating value of his intoxication. Significantly, the appellant did not rely on intoxication in his section 112(2) statement.

[24] The fact that the appellant is a first offender and was gainfully employed whilst supporting his minor children are personal circumstances that were correctly placed before the court *a quo* and were taken into account. While relevant, these factors, carry reduced weight when balanced against the gravity of the offence. [8]

[25] The principle that pre-trial incarceration must be given appropriate weight in determining sentence is well established.[9] The record reflects that the court *a quo* was aware of the 18 months spent in pre-trial custody. Although pre-trial incarceration must receive meaningful consideration, the existence of 18 months' pre-trial detention does not, in the circumstances of this matter and when weighed against the gravity of the offence, constitute a substantial and compelling circumstance justifying departure from the prescribed sentence.

[26] The appellant places reliance on *S v MN* 2011 (1) SACR 286 (ECG) and the trilogy of matters in *S v MM; S v JS; S v JV* 2011 (1) SACR 510 (GNP), in which life sentences

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[8] *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 58.

[9] *Id* at para 60.

imposed for the rape of minors were reduced on appeal. These authorities must, however, be approached with care. Comparative case law is a guide, not a straitjacket

[27] On a proper analysis of the comparative authorities, it is notable that the cases in which life sentences were reduced involved specific distinguishing features not present here. In *S v MN* (supra), the court stated that there is no evidence of serious emotional trauma in the victim. The position in the present matter is materially different. The child victim's mother described in depth the trauma the child suffered in the victim impact report. In *S v JS* (supra), the perpetrator was a young man of 18 years old. In this matter, the appellant was 33, and the father of 3 minor children

[28] The appellant correctly relies on the principle that mitigating factors must be assessed cumulatively and not in isolation. We have undertaken that cumulative assessment. Taking all the mitigating factors together, first-offender status, guilty plea, remorse, employment, support of children, 18 months' pre-trial incarceration, and the influence of alcohol and drugs, we are unable to conclude that their cumulative weight rises to the level of substantial and compelling circumstances. While these factors remain relevant, they are not uncommon in matters falling within the minimum sentencing regime and, on the facts of this case, do not cumulatively amount to substantial and compelling circumstances.

[29] The appellant further relied on *S v Vilakazi*, *supra*, in support of the contention that the prescribed sentence would be disproportionate in the circumstances. However, the present matter is distinguishable on its facts. In *Vilakazi*, the court, among others, attached weight to the fact that the appellant had used a condom,[10] thereby reducing certain risks ordinarily attendant upon the commission of the offence. No similar mitigating feature is present in this matter. The offence exposed the minor complainant to the physical and psychological consequences ordinarily associated with sexual violence against children. While this factor is not decisive in itself, it forms part of the overall assessment of the gravity of the offence and the proportionality of the prescribed sentence.

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[10] *Vilakazi, supra*, at para 55.

[30] The appellant also relied on the fact that he is the father of three minor children as part of his personal circumstances in mitigation. That consideration was properly taken into account by the court a quo, particularly in light of the appellant's financial responsibilities toward his dependants. However, the existence of dependants cannot carry decisive mitigating weight in the sentencing of serious offences involving violence against children. While the appellant's parental responsibilities remain relevant, they must be weighed against the gravity of the offence, the vulnerability of the minor complainant, and the broader interests of society in protecting children from sexual violence. In the circumstances of this matter, where the victim was a six-year-old girl child, the appellant's status as a parent does not constitute a substantial and compelling circumstance justifying a departure from the prescribed minimum sentence.

[31] Nor do we find, in the alternative, that the sentence is disproportionate to the facts of the offence so as to independently constitute a substantial and compelling circumstance. A life sentence for the rape of a minor, causing profound and lasting harm to the child, is not disproportionate. It is the minimum prescribed by the legislature in acknowledgment of the gravity of such offences and the imperative of protecting children from sexual violence. The court *a quo* correctly placed reliance on *S v Solomons and Another*[11] in holding that the potential of rehabilitation does not in itself mean that life imprisonment cannot be imposed.

[32] The central question on appeal is not whether this court would have imposed the same sentence, but whether the court *a quo* exercised its sentencing discretion properly and judicially. The record discloses that the court *a quo* considered the personal circumstances of the appellant, the pre-sentence report, the guilty plea, the pre-trial incarceration, the interest of society, and the seriousness of the offence. It correctly directed itself to the applicable minimum sentencing regime and to the standard required to establish substantial and compelling circumstances. The record reflects that the court *a* quo applied the correct legal framework and concluded that no substantial and compelling circumstances existed. The court *a quo* did not approach the sentencing of the appellant on the basis that the prescribed minimum sentence would be imposed as a matter of

[11] 2008 (2) SACR 149 (E) at para 17.

course, but applied its mind as to whether the sentence imposed was proportional to the offence.

[33] We find no misdirection, let alone one of the nature, degree or seriousness, in the manner in which the court *a quo* approached the sentencing enquiry. The aggravating circumstances were significant: the victim was a minor, and the impact on both the child and her family was severe and ongoing. We are not persuaded that there exists a striking, startling or disturbing disparity between the sentence imposed and that which we would have imposed.

[34] The sentence of life imprisonment, while severe, is neither shockingly inappropriate nor out of all proportion to the gravity of the offence. It is the sentence prescribed by the legislature for offences of this nature, absent substantial and compelling circumstances justifying a departure. No basis has been established for appellate interference.

ORDER

In the result, the following order is made:

1. The appeal against sentence is dismissed.
2. The sentence of life imprisonment imposed by the Regional Court, held at Nigel, on 14 August 2025 is confirmed.

[redacted]

E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree

[redacted]

M KUMALO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the appellant: Instructed by:	Mr. M. B. Kgagara Pretoria Justice Centre
For the respondent: Instructed by:	Mr. V. G. Khoza Director of Public Prosecutions
Date of the hearing:	28 May 2026
Date of judgment:	29 May 2026