REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Appeal No: A112/2020
DPP Ref No: 10/2/5/1-(2020/087)

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

12/06/2026
DATE

[redacted]
SIGNATURE

In the matter between:

MADUNA, MONDLI **APPELLANT**

and

THE STATE **RESPONDENT**

JUDGMENT

Karam AJ:

INTRODUCTION

1. The appellant was charged with seven counts of rape ad one of attempted rape. Pursuant to a guilty plea, he was convicted and sentenced in the Alexandra Regional Court as follows:

   1.1 count 1 – rape – life imprisonment;

   1.2 count 2 – rape – life imprisonment;

   1.3 count 3 – rape – life imprisonment;

   1.4 count 4 – rape – life imprisonment;

   1.5 count 5 – rape – life imprisonment;

   1.6 count 6 – rape – 10 years imprisonment;

   1.7 count 7 – rape – 10 years imprisonment;

   1.8 count 8 – attempted rape – 2 years imprisonment.

2. All of the aforesaid counts were in respect of the same complainant, who was 14 years of age when counts 1 – 2 were perpetrated, 15 years of age when counts

3 – 5 were perpetrated, and 16 years of age when counts 6 – 8 were perpetrated.

3. Counts 1 – 5 were read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the minimum sentence provisions").

   Counts 6 – 7 were read with the provisions of Section 51(2) of the minimum sentence provisions.

4. The matter comes before this court by virtue of the appellant's automatic right to appeal in terms of Section 309 (1) (a) of the Criminal Procedure Act 51 of 1977 ("the CPA").

5. The appellant appeals against both conviction and sentence.

AD CONVICTION

6. The appellant raises various issues on conviction that this court is required to determine:

   6.1 whether count 1 is a duplication of the conviction on count 2;

   6.2 whether the appellant's legal representative was incompetent to the extent that the appellant had an unfair trial and whether the trial court had erred in convicting the appellant.

7. Regarding 6.1 hereinabove:

7.1 Count 1 of the charge sheet alleged that the appellant had raped the complainant on 25 May 2015.

Count 2 alleged that the appellant had raped the complainant on diverse occasions between the periods May 2015 and June 2015.

7.2 Clearly, the periods referred to in count 2 includes the date specified in count 1. Whilst this was initially disputed by counsel for the State, she ultimately conceded same.

Accordingly, I am of the view that there is merit on this ground, that the conviction on count 1 was a misdirection in that it was a duplication of the conviction on count 2, and that the conviction and sentence imposed on count 1 ought to be set aside.

8. Regarding 6.2 hereinabove:

8.1 An allegation that a legal representative is incompetent, resulting in an unfair trial, must be substantiated and a court of appeal must be shown the incompetent conduct complained of and how same resulted in the trial being unfair.

S v Halgryn 2002 (2) SACR 211 (SCA)

8.2 I am of the view that there is no merit in this submission, for the following reasons:

8.2.1 It is evident from the record that an interpreter was utilized in the trial, that the appellant understood the charges, that the minimum sentence provisions were explained to him prior to him pleading, and that he freely and voluntarily pleaded guilty thereto. The appellant confirmed the content of the plea marked Exhibit A, and signed same in court.

8.2.2 There is no merit in the submission that were the learned Magistrate to have questioned the appellant, that a plea of not guilty would have been entered. The appellant was 39 years of age and not a youth, and there was nothing stopping him from disputing the content of his plea statement and/or refusing to sign same.

There is nothing that appears from the record that would have warranted the learned Magistrate to question the appellant on any aspect.

8.2.3 The pre – sentence report was obtained subsequent to the conviction. Whilst there is a reference therein to the sexual intercourse with the complainant having been consensual. The appellant's legal representative advised the court that reference thereto was a mistake on his part.

In court, and on the learned Magistrate's questioning thereon, the legal representative approached the appellant and confirmed to the court that the

appellant had erred in stating same and confirmed that there was no consent.

9. For the aforesaid reasons, I am of the view that save for the duplication of conviction in respect of count 1, there is no merit on the other grounds submitted in respect of conviction.

AD SENTENCE

10. It is trite that punishment is pre-eminently a matter for the discretion of the trial court. A court of appeal can only interfere with the sentence imposed where that discretion has not been judicially, properly or reasonably exercised, resulting in irregularity or misdirection, or where the sentence imposed is shockingly inappropriate in that it is substantially different from that sentence which the appeal court would have imposed.

S v Pieters 1987 (3) SA 717 (A)

S v Malgas 2001 (1) SACR 469 (SCA)

DPP v Mngoma 2010 (1) SACR 427 (SCA)

S v Grobler 2015 (2) SACR 210 (SCA)

11. The appellant was made aware, prior to pleading, of the implications of the minimum sentence legislation.

12. It is common cause that having regard to the age of the complainant and the fact

that she was raped on multiple occasions, that the appellant fell squarely within the ambit of the minimum sentence legislation of life imprisonment on counts 2 – 5 and 10 years imprisonment on counts 6 – 7.

13. The fact that the appellant was ultimately not called to testify does not necessarily lead to the only inference that his legal representative was incompetent or that the appellant had had an unfair trial. There is further no affidavit or document from the appellant stating that he wished to testify but that his legal representative persuaded him or prevented him from doing so.

    13.1 It is, in any event, highly improbable that even were the appellant to have testified to having remorse and apologised to the complainant, that that would, given the aggravating circumstances in this matter, have constituted a substantial and compelling factor warranting a departure from the imposition of the minimum sentences.

14. There are various aggravating factors:

    14.1 the fact that the complainant was raped over a period of years on multiple occasions;

    14.2 the fact that the complainant fell pregnant and bore the appellant's child as a result;

14.3 the grave effects that the rapes have had on the complainant's mental health;

14.4 the probability that it was the appellant who, as a result of the rapes, had infected the complainant with HIV;

14.5 the scourge of rape and prevalence thereof, especially that of minor children, in our society.

15. In **S v Malgas** supra it was stated that the minimum sentence legislation aimed at ensuring a severe standardized and consistent response from the courts and is to be applied unless there are and can be seen to be truly convincing reasons for a different response.

Further, that the specified sentences are not to be departed from lightly or for flimsy reasons which cannot withstand scrutiny.

This has been reiterated by the superior courts on numerous occasions.

16. I am of the view that the learned Magistrate properly considered all the mitigating factors, and correctly found that same, neither individually nor cumulatively considered, constitute substantial and compelling factors.

17. I am further of the view that the imposition of the minimum sentences is not

disproportionate, considering the facts and circumstances as a whole, and does not result in an injustice.

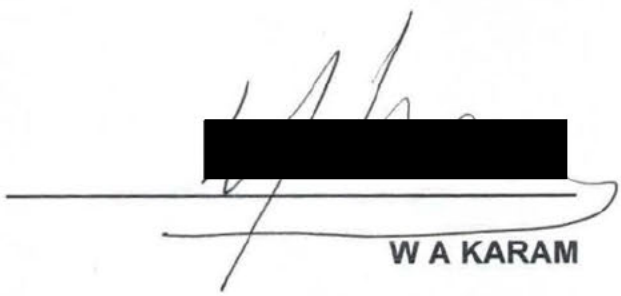
18. Accordingly, I am of the view that there is no merit in the appeal against sentence.

19. In the circumstances I propose the following Order:

19.1 The appeal against the conviction on count 1 is upheld;

The conviction and sentence on count 1 is set aside.

19.2 The appeal against the convictions and sentences on the remaining counts is dismissed.



W A KARAM

ACTING JUDGE OF THE HIGH COURT

I AGREE AND IT IS SO ORDERED

M P MOTHA

JUDGE OF THE HIGH COURT

Appearances:

Date Reserved 26 January 2026

Date of Judgment 12 June 2026

Appellant: Adv I Mthembu
Legal Aid SA
Johannesburg Office

Respondent: Adv T J Mbodi
Director of Public Prosecutions
Gauteng Division, Johannesburg