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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

CASE NO: A183/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
(4) DATE 12/6/2026
(2) SIGNATURE

In the matter between:

E[...] M[...]

Appellant

and

THE STATE

Respondent

JUDGMENT

VAN DER MERWE AJ

[1] The Appellant was charged with two counts of contravening section 3, read with sections 1, 56(1), 57, 58, 59, 60 and 61 of Act 32 of 2007, arising from the rape

of an 11-year-old child. The Appellant was convicted on both counts of rape. The court a quo found that no substantial and compelling circumstances existed to justify a departure from the prescribed minimum sentence and accordingly sentenced the Appellant to life imprisonment.

[2] In terms of section 103(1)(g) of the Firearms Control Act 60 of 2000, the trial court declared the Appellant unfit to possess a firearm. The court further made an ancillary order in terms of section 50(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, directing that the Appellant's name be entered in the National Register for Sex Offenders. In addition, the court ordered, in terms of section 120(4) of the Children's Act 38 of 2005, that the Appellant is unsuitable to work with children.

[3] The Appellant is before this Court, exercising his automatic right of appeal in terms of section 309(1)(a) of the Criminal Procedure Act 51 of 1977 ("the CPA"), seeking to set aside both his conviction and the sentence imposed by the court a quo.

[4] In his grounds of appeal, the Appellant contended that the Regional Magistrate misdirected himself in finding that the State had discharged its onus of proving the Appellant's guilt beyond a reasonable doubt. He further asserted that the cautionary rule applicable to the evidence of a single witness was not properly applied. The Appellant also challenged the sentence imposed, contending that the trial court erred in failing to find the existence of substantial and compelling circumstances justifying a departure from the prescribed minimum sentence.

- [5] During argument, counsel for the Appellant properly conceded that there was no basis upon which to challenge the Appellant's conviction. In the circumstances, the conviction requires no further consideration and only the sentence remains in issue on appeal.

Ad Sentence

- [6] The Appellant's grounds of appeal, and the submissions advanced on his behalf, are directed primarily at the sentence imposed. It was contended that the trial court erred in failing to find the existence of substantial and compelling circumstances justifying a departure from the prescribed minimum sentence of life imprisonment. In particular, it was submitted that the trial court failed to give adequate consideration to the Appellant's prospects of rehabilitation and reformation.

- [7] Counsel for the Appellant submitted that the following factors, when considered cumulatively, constituted substantial and compelling circumstances warranting the imposition of a lesser sentence:

7.1 The Appellant had been incarcerated for a period of 37 months awaiting the finalisation of the trial;

7.2 The Appellant was 40 years old at the time sentence was imposed;

7.3 The Appellant was unmarried and had minor children whom he supported financially;

7.4 The Appellant was a first offender;

7.5 The Appellant had suffered a significant loss of standing and esteem within both his family and the broader community;

7.6 The Appellant's formal education extended only to Grade 7; and

7.7 The Appellant was unemployed.

[8] It was further submitted on behalf of the Appellant that the complainant did not sustain any serious or permanent physical injuries as a consequence of the offences. Counsel argued that sentencing courts should be guided by the public interest rather than public sentiment or expectation and that a sentence should not exceed the bounds of what is reasonably required to serve the purposes of punishment. On this basis, it was contended that the sentence of life imprisonment was disproportionately severe and that the effective term of imprisonment ought to be substantially reduced.

[9] It was submitted on behalf of the State that the court a quo had properly taken into account the following mitigating circumstances:

9.1 The Appellant was 40 years of age;

9.2 The Appellant had parental responsibilities towards his minor children;

9.3 The Appellant discontinued his schooling due to financial constraints;

9.4 The Appellant was employed as a bricklayer and was able to support himself and his family;

9.5 The Appellant was a first offender; and

9.6 The Appellant had been in custody from 21 January 2022 until February 2025.

[10] The aggravating circumstances considered by the Court *a quo* were as follows:

10.1 The prevalence and seriousness of the offence;

10.2 Rape is a crime that gravely violates a person's dignity, security, freedom, and overall well-being;

10.3 Given the increasing incidence of rape, the imposition of a lengthy term of imprisonment is warranted;

10.4 The Appellant raped the same child on two separate occasions;

10.5 The complainant held the Appellant in high regard, as he provided support to her and her family;

10.6 The victim was 11 years old, while the Appellant was approximately 37 years of age at the time of the offences;

10.7 The Appellant exploited the paternal relationship he had with the complainant;

10.8 According to the victim impact report, the Appellant caused severe trauma, leaving the complainant unable to form relationships with other males. This harm is expected to have lasting effects into adulthood;

10.9 The Appellant was arrested only after evading the police.

[11] It was further submitted that the abuse of women and children, particularly young girls, is pervasive in this country. In light of the aggravating circumstances, these clearly outweigh the mitigating factors. Considering the specific facts of this matter, the trial court cannot be said to have committed any misdirection.

[12] The court *a quo* found that no substantial or compelling circumstances were present. I am unable to conclude that, in imposing a sentence of life imprisonment, the court *a quo* acted disproportionately in relation to the Appellant.

[13] The act of raping one's girlfriend's 11 year old daughter on two separate occasions, is profoundly reprehensible and utterly indefensible. **In *S v Chapman [1997] ZASCA 45; 1997 (2) SACR 3 (SCA) at 5b-c*** rape was describe in these terms:

"Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. The rights to

dignity, to privacy and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation.

Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives.”

[14] Furthermore, in ***N v T 1994 (1) SA 862 (C) at 864G*** rape was described as:

“Rape is a horrifying crime and is a cruel and selfish act in which the aggressor treats with utter contempt the dignity and feelings of his victims.”

[15] The gravity of the offence is compounded when such a crime is inflicted upon a young child, and in this case, on two separate occasions. The imposition of a life sentence is therefore not disproportionate to the seriousness of the crime. In addressing society’s needs, the Minimum Sentences Act was enacted specifically to confront the scourge of rape in this country. A court should not readily depart from the minimum prescribed sentence unless substantial and compelling circumstances are present. Society demands that these horrific crimes be met with the prescribed minimum sentence, and the imposition of life imprisonment accordingly serves both justice and the broader interests of society.

[16] It must be emphasized that the complainant was only 11 years old at the time of the incident. She was exceptionally vulnerable and entirely defenceless. In ***S v D 1995 (1) SACR 259 (A) at 260G-H***, the Supreme Court of Appeal noted that children are vulnerable to abuse, and the younger they are, the more vulnerable they are. They are usually abused by those who think they can get away with it, and all too often do.

[17] It is trite law that sentencing falls pre-eminently within the discretion of the trial court. An appellate court will not interfere with such discretion unless a material misdirection or irregularity is evident, or where the sentence imposed is so startlingly inappropriate as to induce a sense of shock.¹ Accordingly, interference is justified only if it appears that the trial court exercised its discretion improperly or unreasonably.²

[18] In the present matter, the central enquiry is whether the court *a quo*, in imposing a sentence of life imprisonment, exercised its discretion judicially and appropriately. It was contended on behalf of the Appellant that the trial court failed to give due consideration to his personal circumstances and erred in not

¹ *S v Moosajee* [1999] 2 All SA 353 (A), para 8

² *S v Gerber* [1998] 4 All SA 315 (NC).

finding substantial and compelling reasons to depart from the prescribed sentence of life imprisonment.

[19] Section 51(3) of the Criminal Law Amendment Act requires the imposition of prescribed minimum sentences unless the court is satisfied that substantial and compelling circumstances exist to justify a lesser sentence. While I remain mindful of the Appellant's personal circumstances, I am persuaded that the sentence imposed by the trial court is unimpeachable. The Appellant twice-raped an innocent child who looked to him for protection, and in doing so, he gravely betrayed the trust reposed in him by the complainant.

[20] Crucially, in **S v Vilakazi 2009 (1) SACR 552 (SCA) para 58**, the Supreme Court of Appeal held that in cases involving serious crimes, the personal circumstances of the offender necessarily recede into the background. Once it is clear that the offence warrants a substantial period of imprisonment, considerations such as whether the accused is married or single, has two or three children, or is employed, become largely immaterial. These are the type of "flimsy" grounds that **S v Malgas 2001 (1) SACR 469 (SCA)** cautioned courts to avoid.

[21] The sentence imposed is neither shockingly inappropriate nor disproportionate. It reflects a proper balance between the interests of the Appellant and those of society. The aggravating factors in this case are profound and far outweigh any mitigating considerations. The Appellant was convicted of raping an 11 year old child on two occasions. As correctly argued by the Respondent, the complainant was vulnerable not only due to her age but also because of the father-daughter

relationship between herself and the Appellant. He egregiously breached that position of trust for his own gratification. Moreover, the offence was committed in the family home, a place where the child should have been safest.

[22] The prevalence of offences against children in this country, as noted in **S v Hadebe and Others 1997 (2) SACR 641 (SCA)**, necessitates sentences that reflect the gravity of such crimes and serve as a deterrent. While courts must guard against imposing disproportionate sentences, the facts of this case epitomize the very type of offence the Legislature sought to address through the prescribed minimum sentence.

[23] In my view, substantial and compelling circumstances contemplated by section 51(1) of the Criminal Law Amendment Act, were not established. The aspects raised by the Appellant are standard considerations in sentencing. They do not constitute exceptional examples of those factors, nor are they present to an exceptional degree. Having weighed all relevant considerations, I am not persuaded that the trial court misdirected itself. The court properly evaluated the Appellant's personal circumstances and balanced them against the seriousness of the offence, the interests of society, and the vulnerability of the victim.

[24] The argument that the aggravating factors, individually and collectively, far outweigh the mitigating factors is one with which I fully agree. To impose any sentence other than life imprisonment for the repeated rape of an 11 year old child by a trusted adult would, in my view, constitute an injustice and diminish the seriousness with which society, through its Legislature and courts, regards such

crimes. This sentence does not induce a sense of shock; rather, it reflects the gravity of the offence and the legitimate outrage of the community. It is proportionate to the crime committed and does not warrant adjustment on appeal.

Order

[25] The appeal on both conviction and sentence is dismissed.

VAN DER MERWE AJ
ACTING JUDGE OF THE HIGH COURT

I agree

TEFFO J
JUDGE OF THE HIGH COURT

DATE OF ARGUMENT: 24 FEBRUARY 2026

DATE OF JUDGMENT: 12 JUNE 2026

REPRESENTATIVES

FOR APPELLANT: M G BOTHA
LEGAL AID SA

FOR RESPONDENT: ADV C PRUIS
OFFICE OF THE NATIONAL PROSECUTING AUTHORITY