

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

Not reportable
Case no: A3/2026

In the matter between:

RICHARD SNYDERS

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Snyders v The State* (A3/2026) [2026] ZAFSHC 407 (2026) (26 August 2026)

Coram: DANISO J *et* STEYN AJ

Heard: 24 August 2026

Delivered: 26 August 2026.

Summary: Criminal law – rape – sexual assault – single witness evidence – child witnesses – credibility – cautionary rule – minimum sentence – life imprisonment – evidence satisfactory in all material respects – no substantial and compelling circumstances justifying lesser sentence – Criminal Law Amendment Act 105 of 1997.

ORDER

On appeal from: Regional Court of the Free State, sitting in Parys:

1 The appeal against convictions and sentences are dismissed.

JUDGMENT

Steyn AJ (Daniso J concurring)

[1] The appellant was charged in the regional court, Parys, Free State, with eight counts of rape and one count of sexual assault. Counts 1, 3 and 4 relate to the alleged rape of the first complainant, while count 2 relates to the alleged sexual assault of the first complainant. Counts 5 to 9 relate to the alleged rape of the second complainant. At the time of the incidents, the first complainant was ten years and the second complainant six years old therefore, the counts in count 1, 3, 4, 5, 6, 7, 8 and 9 were read with the minimum sentence provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997, Part I of Schedule 2 (the CLAA).

[2] The appellant was legally represented during the trial and was advised that, should he be convicted on the rape counts he may, in the absence of substantial and compelling circumstances, warranting a deviation from the prescribed minimum sentence of life imprisonment as provided for in the CLAA, be sentenced to life imprisonment. He pleaded not guilty on all charges. The appellant was convicted of rape in respect of count 7, in terms of s 261(1)(c) of the Criminal Procedure Act 51 of 1977, he was convicted of sexual assault in respect of count 1, 2, 5, 6, and 8. He was found not guilty and discharged in respect of the remaining counts.

[3] The appellant was sentenced as follows:

- (a) In respect of count 1, attempted rape, eight years' imprisonment;
- (b) In respect of counts 2, 5, 6 and 8, sexual assault, four years' imprisonment on each count;
- (c) In respect on count 7, rape, life imprisonment.

It was ordered that the terms of imprisonment in respect of counts 1, 2 5, 6 and 8 should run concurrently with the life imprisonment.

[4] This appeal comes before us by virtue of the fact that the appellant has an automatic right of appeal in terms of s 309(1)(a) of the Criminal Procedure Act 51 of 1977, as amended by s 10 of the Judicial Matters Amendment Act 42 of 2013. His appeal is against both the convictions and sentences.

[5] Before I deal with the grounds of appeal, I find it prudent to briefly set out the evidence presented to and accepted by the trial court. The complainants testified that the accused had been in a relationship with their mother during 2019. At the time they were living with their mother in Parys and later the appellant moved in with them at 2[...] S[...] Street, Parys. The first complainant testified that during 2019 she and the appellant were home alone. The appellant pinned her to the bed and inserted a koki pen into her vagina. She testified that the second complainant witnessed this event. There was a second incident where the appellant pulled her into his bedroom, removed her underwear and used his finger to play with the 'outside' of her vagina.

[6] The second complainant testified that during 2019, when she and the appellant were at home alone, he used his tongue and performed up and down movements on her vagina. She testified that on a second occasion, he kissed her vagina. On a third occasion, the appellant also removed her underwear and inserted a koki pen into her vagina. The last occasion was when they were all at home, the appellant, both complainants and the complainants' mother. They had ordered pizza and the mother went outside to fetch it. While she was outside, the appellant held the second complainant down and licked her buttocks. The second complainant confirmed witnessing the appellant inserting a koki pen into her sister, the first complainant's vagina.

[7] There was an additional incident while the second complainant was bathing, when the appellant went outside to repair a faulty electricity box, where he was staring at her in the bath through an open window. The second complainant testified that her mother entered the bathroom, saw the appellant looking at the second complainant and confronted him, whereupon he apologised. Both complainants testified that the appellant had held his hand over their mouths to prevent them from screaming on each occasion, and that he told them not to tell their mother because then he would go to jail and would no longer be in a relationship with their mother.

[8] The complainants' mother testified that there had been instances where the two complainants made certain allegations in respect of the appellant to her, that she confronted him, but that he denied the allegations. She confirmed witnessing the

appellant looking at the second complainant through the bathroom window. She testified that during 2019, the second complainant had a conversation with her and told her that she had witnessed the appellant removing the first complainant's underwear and tinkered with her vagina. This, the mother testifies, was the catalyst for her decision to take the matter further and she reported the incidents to the police.

[9] Dr Meso testified that he examined the complainants and confirmed that he is the author of the two J88' medical reports, which were submitted into evidence by agreement as Exhibits 'B' and 'C'. He testified that in respect of the first complainant there were no physical injuries or swelling in relation to her vagina and surrounding anatomy and that her hymen was intact. He testified that due to the hymen being closed, penetration was unlikely. In respect of the second complainant, Dr Meso observed the hymen to have a halfmoon injury. This means that the hymen has been partially broken. He testified that, given the second complainant's age being 6 years old at the time, it is highly unlikely to have been a natural phenomenon. He confirmed that his observations could be consistent with blunt trauma of the vagina.

[10] The appellant denied the allegations levelled against him by the complainants. He testified that he had a good relationship with the complainants and that they have falsely implicated him. The reason for this, he testified, could have been that the mother wanted to rekindle her relationship with her husband and convinced the complainants to lay these false claims against him. He also alleged that the mother had some debt which she wanted to evade by returning to her husband. In respect of the halfmoon injury, to the second complainant's hymen, the appellant testified that it could have been suffered during an accident where the second complainant was run over by a motor vehicle. These are the only reasons he could fathom for the complainants making these false allegations.

[11] The appellant's grounds for appeal against his conviction and sentence, as contained in the appellant's notice of appeal, read as follows:

'AD CONVICTION

1. The Honourable Court erred in finding that the three state witnesses: K[...] L[...]; B[...] L[...] and M[...] L[...], were honest and reliable witnesses whose evidence

should be believed and carried a stamp of approval, and further that there was nothing in the evidence presented by the state which raised some red flags.

2. The Honourable Court further erred in rejecting the evidence of the appellant in its totality as false and incorrect.

AD SENTENCE

1. An effective life imprisonment is strikingly inappropriate in that it:
 - 1.1 Is out of proportion to the totality of the accepted facts in mitigation;
2. The Court erred by not imposing a shorter term of imprisonment, more particularly in view of the following factors:
 - 2.1 The absence of planning;
 - 2.2 The age and personal circumstances of the Appellant;
 - 2.3 The rehabilitation element;
 - 2.4 The mitigating factors inherent in the facts found proven.
3. The Court further erred in over-emphasising the following factors:
 - 3.1 The seriousness of the offence;
 - 3.2 The interests of society;
 - 3.3 The prevalence of the offence;
 - 3.4 The deterrent effect of the sentence;
 - 3.5 The retributive element of sentencing;
4. The Court further erred in finding that there were no substantial and compelling circumstances which necessitated deviation from imposing a minimum sentence of life imprisonment.'

[12] In respect of the appellant's conviction, the learned magistrate gave a well-reasoned *ex tempore* judgment wherein the evidence presented by the state and the appellant was summarised. The magistrate thoroughly considered the fact that the complainants, save for count 7, were single witnesses to the offences, coupled with being child witnesses. He applied the cautionary rules in evaluating the evidence of the complainants and found that notwithstanding their tender ages, their evidence was clear, chronological and consistent. They were able to provide the court with surrounding details of each incident and ultimately found them to be honest and reliable witnesses. The magistrate likewise deemed the two remaining state witnesses, the mother of the complainants and Dr Meso, to be credible. The mother of the complainants admitted that the complainants informed her of certain of the incidents but

that she did not take it further after confronting the appellant. Dr Meso confirmed the halfmoon injury observed in the second complainant and testified that this may be attributed to penetration. He further confirmed no injuries observed in the first complainant and accordingly the gynaecological conclusions in the J88 medical reports indicated 'child molestation' as there were no signs of abrasions or penetration.

[13] The magistrate found the appellant's testimony to be fraught with inconsistencies and improbabilities and that the appellant adjusted his version throughout his evidence. This included the version that the mother of the complainants manipulated them to make these false allegations in an attempt to get rid of him and rekindle her relationship with her husband, and that the halfmoon hymen injury was attributable to the second complainant being struck by a vehicle. None of these versions and/or defences were put to any of the state witnesses. The magistrate rejected the appellant's versions and found the state to have proven its case beyond a reasonable doubt. In considering the collective evidence as a whole, the magistrate convicted the appellant, including lesser charges as competent verdicts.

[14] It is trite that the powers of a court of appeal to interfere with the findings of fact of a trial court are limited, and that, only in exceptional circumstances and clear misdirection being proven, will this Court be entitled to interfere with a trial court's evaluation of oral testimony or findings of fact.¹ In my view the magistrate correctly convicted the appellant as he did. He took a holistic approach in his consideration of all the evidence before him and correctly applied the relevant legal principles. He provided a comprehensive *ex tempore* judgment setting out his reasoning for finding the state to have proven its case beyond a reasonable doubt and applied competent verdicts.

[15] I find no basis for this Court to interfere with the convictions and the appeal against the convictions should accordingly be dismissed.

[16] The appellant's notice to appeal, as mentioned above, mainly states that the sentence is shockingly inappropriate and not proportionate to the offences convicted of and that the magistrate erred in finding no substantial and compelling circumstances

¹ *S v Francis* 1991 (1) SACR 198 (A) at 204C-E; *R v Dhlumayo and Another* 1948 (2) SA 677 (A) at 695-696.

present having regard to the appellant's personal and other surrounding circumstances. Similar to his judgment on conviction, the learned magistrate gave a comprehensive and well-reasoned judgment in respect of sentencing. On a reading thereof, it is evident that the magistrate was well versed with the principles set out in *S v Zinn*.² He had proper regard to the appellant's personal circumstances, the nature and severity of the offence and the interests of the community and that of the complainants. He considered the victim impact statements as well as the evidence of Ms Coetzee in mitigation.

[17] In mitigation, it was presented to the trial court that the appellant was a first offender, that he is 43 year old with a grade 11 level of education, he was working as a foreman at a glass and aluminum company for approximately 7 years and earned an income of R6000 per month. The magistrate was further aware of the principles set out in *S v Malgas*,³ in respect of factors which warrant a deviation from the prescribed minimum sentence of life imprisonment. Having been convicted of rape, read with the provisions of the CLAA, the magistrate found no substantial and compelling circumstances present to justify a deviation from the minimum sentence of life imprisonment.

[18] As was held by Holmes JA in *S v Rabie (Rabie)*:⁴

'1 In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal -

(a) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court"; and

(b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been "judicially and properly exercised".

2 The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate.'

[19] No grounds for irregularity or misdirection have been alleged by the appellant, accordingly, and being mindful of the principles in *Rabie*, the only consideration is whether the sentence is 'disturbingly inappropriate'. As indicated herein above, the

² *S v Zinn* 1969 (2) SA 537 (A) 540G.

³ *S v Malgas* 2001 (SACR) 469 (SCA).

⁴ *S v Rabie* 1975 (4) SA 855 (AD).

magistrate thoroughly considered all factors in reaching a balanced and just sentence. Our courts have consistently held that rape is a very serious offence, one that humiliates and degrades a victim and invades their privacy, dignity and person.⁵ This even more so when it is the rape of a vulnerable minor child, by someone they had once trusted and felt safe with. This is a reprehensible crime void of any tolerance in our society.

[20] Having regard to the principles warranting interference with the sentence imposed by the trial court, I find no reason to attribute any fault to the magistrate and accordingly the appeal against the imposed sentence should be dismissed.

[21] Accordingly, the following order is made:

1 The appeal against convictions and sentences are dismissed.

L STEYN

ACTING JUDGE OF THE HIGH COURT

I concur

N S DANISO

JUDGE OF THE HIGH COURT

Appearances

For the appellant:

S Kruger

Instructed by:

Legal-Aid South Africa,
Bloemfontein

⁵ *S v Chapman* 1997 (2) SACR 3 (SCA) at 5A-B.

For the respondent:

MM Moroka

Instructed by:

National Director of Public Prosecutions,
Bloemfontein.