

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION MAHIKENG**

CASE NO: CA51/2025

In the matter between:

NOSANG CYPRIAN MOTSHEDI

APPELLANT

And

THE STATE

RESPONDENT

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **01 SEPTEMBER 2026 at 16h00**.

Summary: Appeal against convictions and sentences — Court a quo misdirected itself regarding the facts and the law — the effect of not explaining the consequences of the sentencing provisions contained in section 51 of the Criminal Law Amendment Act 105 of 1997 to the accused at the beginning of the trial- Charge sheet not reflecting that accused is alleged to have committed the offence in question in furtherance of common purpose — failure to inform accused of the

charge in full is in direct infringement of the accused's right to a fair trial which is contained in s 35(3)(a) of the Constitution. Sentence — Appeal court can only interfere with the sentence of the court *a quo* in a case of serious misdirection — sentences and convictions set aside.

ORDER

- (i) Condonation for the late filing of the appeal is granted.
- (ii) The appeal against convictions and sentences on all three counts succeed.
- (iii) The convictions and sentences on all three counts are set aside.

JUDGMENT

Coram: Hendricks JP and Matlhape AJ concurring

Introduction

[1] This is an appeal against the convictions and sentences imposed upon the appellant on 01 October 2024 by the Taung Regional Court per Regional Magistrate B Zulu. The appellant was convicted of three offences, namely:

1.1 One count of housebreaking with intent to rob and robbery read with the provisions of section 260 and 262 (1) of the Criminal Procedure Act 51 of 1977 (“the CPA”) in respect of which he was sentenced to 15 years’ imprisonment;

1.2 One count of attempted murder, in respect of which he was sentenced to two years imprisonment;

1.3 One count of contravening the provisions of Section 5(2), read with sections 1, 56(1), 57, 58, 59, 60, and 61 of Act 32 of 2007 also read with sections 256 and 261 of the CPA (Sexual Assault) in respect of which he was also sentenced to two years imprisonment.

[2] The sentences were ordered to run concurrently.

[3] On 27 March 2025, the appellant was granted condonation for the late filing of his notice of appeal and leave to appeal. On 19 June 2025 the appellant was granted bail pending appeal. The appellant appeals against both convictions and sentences on all three counts and also seeks condonation for the late filing of this appeal. It is common cause that at the commencement of the trial, the sentencing provisions contained in section 51 of the Criminal Law Amendment Act 105 of 1997 (“the CLAA”) were not explained to the appellant. It is further common cause that the charge sheet did not invoke the doctrine of common purpose in relation to the charges upon which the appellant was ultimately convicted.

[4] The appellant pleaded not guilty to all three counts and exercised his constitutional right to remain silent. At the conclusion of the trial, the court *a quo* found that the State had proved its case beyond reasonable doubt on all three counts.

[5] The respondent (State), however, concedes the appeal against both conviction and sentence. It bears mentioning that although the State's concession is an important consideration, this court is nevertheless required to consider the record and determine whether the convictions and sentences can properly stand. The appeal accordingly falls to be determined on the record and the applicable legal principles. Similarly, the fact that the State does not oppose the condonation application by the appellant does not mean that such should escape this court's scrutiny.

Grounds of Appeal

[6] The appellant advances, in substance the following grounds of appeal:

6.1 that the learned Regional Magistrate erred in finding that the State had proved the appellant's guilt beyond reasonable doubt on all three counts;

6.2 that the Magistrate misdirected himself in finding that the technical evidence of Mr Fishang Singh, the cellular telephone analyst, was sufficient to establish the appellant's guilt;

- 6.3 that the Magistrate erred in finding a contradiction between the appellant's version and the evidence of Mr Singh regarding the tower location at which the SIM card was inserted;
- 6.4 that the Magistrate erred in finding that the technical evidence established that the SIM card was inserted into a handset belonging to one of the complainants;
- 6.5 that the Magistrate erred in rejecting the appellant's alibi as an afterthought;
- 6.6 that the Magistrate misdirected himself by relying on the doctrine of common purpose when common purpose was neither alleged in the charge sheet nor put to the appellant;
- 6.7 that the Magistrate failed to determine whether the robbery was committed with aggravating circumstances and failed to properly invoke the applicable provisions of the CLAA; and
- 6.8 that the Magistrate erred in sentencing the appellant in terms of the minimum-sentence legislation without properly informing him of its applicability.

Ad Condonation

[7] Before dwelling in the merits of the appeal, this court is called upon to first determine the application for condonation of the late noting and prosecution of this appeal. The principles applicable to applications of this nature are well established. Condonation is not to be had merely for the asking. The overriding consideration is whether it is in the interests of justice to grant the indulgence sought. The court must in determining that question, have regard to all relevant circumstances including the extent and cause of the delay, the explanation furnished and importantly the applicant's prospects of success. In this matter, leave to appeal was granted on 27 March 2025 and the Notice of Appeal was to be filed on 17 April 2025. The Notice of Appeal was only filed on 31 October 2025 resulting in a delay of six- and-a-half months.

[8] In *Van Wyk v Unitas Hospital and Another*¹ the Constitutional Court held that:

'This Court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation

¹ 2008 (2) SA 472 (CC) at para 20.

for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success.’

[9] Similarly, in *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Ltd and Others*² the Supreme Court of Appeal held that:

‘[26] What calls for an explanation is not only the delay in the timeous prosecution of the appeal, but also the delay in seeking condonation. An appellant should, whenever he realises that he has not complied with a rule of this court, apply for condonation without delay. A full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. Factors which usually weigh with this court in considering an application for condonation include the degree of non-compliance, the explanation therefor, the importance of the case, a respondent’s interest in the finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice.’

[10] The explanation advanced by the applicant must therefore be assessed against the entire period of non-compliance. In *Uitenhage Transitional Local Council v South African Revenue Service*³ the SCA stressed the necessity for a full, detailed and accurate account of the causes of the delay and their effect and held that:

‘One would have hoped that the many admonitions concerning what is required of an applicant in a condonation application would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this Court: condonation is not to be had merely for the asking;

² 2017 (6) SA 90 (SCA) at paras 26.

³ 2004 (1) SA 292 (SCA) at para 6.

a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. It must be obvious that if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out.'

[11] The court must also consider whether the intended appeal enjoys reasonable prospects of success. This does not require the court, at the condonation stage, to determine the merits of the appeal finally. The enquiry is whether there is a reasonable prospect that another court would come to a different conclusion.

[12] In *Mulaudzi*,⁴ the SCA confirmed that prospects of success are an important, although not decisive, consideration. The court should be furnished with sufficient information to enable it to make at least a *prima facie* assessment of the merits of the intended appeal. A bare assertion that the appeal has good prospects is insufficient. In this case, the appellant explains that the delay was caused by the fact that he rely on family to make means available to secure legal representation. He states that once legal representation was secure, the appeal was noted promptly.

[13] Having considered the grounds upon which the intended appeal is based, I am satisfied that the applicant has demonstrated reasonable prospects of success

⁴ Supra, at para 34.

and that the grounds raised are not frivolous or merely speculative and they disclose issues which warrant consideration by this court. I accordingly attach appropriate weight to this factor in determining the interests of justice.

[14] Ultimately, condonation involves a weighing-up of competing considerations. The applicant's non-compliance with the prescribed time periods cannot be condoned as a matter of right. However, procedural rules exist to facilitate the administration of justice and are not intended to operate as an end in themselves.

[15] Having regard to the explanation for the delay, the extent of the non-compliance taken together with the applicant's prospects of success, I am satisfied that the interests of justice favour the granting of condonation. The applicant's explanation is satisfactory, no prejudice will be suffered by the respondent if condonation is granted and it is in the interests of justice that condonation be granted.

Ad Conviction

[16] It is trite that before an accused can be convicted of an offence based on the allegation that he committed the offence in question in furtherance of a common purpose, such fact should be clearly and unequivocally set out in the charge sheet. The accused should be appraised of that fact before pleading to the charge. This is, in my view, a fundamental issue in the determination of this

appeal. It is common cause that the charge sheet did not allege that the appellant acted in common purpose with any other person in the commission of the alleged offences. Nor does the record disclose that the State sought an amendment of the charge sheet in terms of section 86 of the CPA so as to introduce common purpose. Notwithstanding this, the court a quo relied upon common purpose as a basis for the appellant's conviction.

[17] That approach cannot be sustained. Section 35(3)(a) of the Constitution provides that every accused person has the right to a fair trial, which includes the right "to be informed of the charge with sufficient detail to answer it". The right is substantive and not merely formal. In *Msimango v S*⁵ the Supreme Court of Appeal dealt with circumstances strikingly similar to those in the present matter. The regional magistrate had relied on common purpose although the doctrine had neither been alleged in the charge sheet nor proved in evidence. The court held that:

"... It is common cause that in convicting the appellant on count 3, the regional magistrate relied on the doctrine of common purpose even though it was never averred either in the charge sheet or proved in evidence. It was impermissible for the regional magistrate to have invoked the principle of common purpose as a legal basis to convict the appellant on count 3 as this never formed part of the state's case.

[15] Undoubtedly, the approach adopted by the regional magistrate of relying on common purpose which was mentioned at the end of the trial is inimical to the spirit and purport of s

⁵ [2017] ZASCA 181; 2018 (1) SACR 276 (SCA) at paras 14–18.

35(3)(a) of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution) under the heading ‘Arrested, detained and accused persons’. In fact it is subversive of the notion of the right to a fair trial which is contained in s 35(3)(a) of the Constitution which provides in clear terms that:

‘(3) Every accused person has a right to a fair trial, which includes the right –

(a) to be informed of the charge with sufficient details to answer it.’”

[18] The principle has recently been reaffirmed and authoritatively restated by the Supreme Court of Appeal in *Ntuli v The State*⁶ wherein the court considered an appeal where common purpose had not been alleged in the charge sheet and the State had not alerted the accused during the trial that it intended to rely on that doctrine. The court held that:

‘There was, accordingly, no forewarning to Mr Ntuli that his conviction was sought on the basis of common purpose. A conviction based on common purpose would, in these circumstances, amount to material unfairness. He was made to believe that the convictions were sought against him based on his own direct act of shooting at the police officers. His belief, in this regard, was strengthened by the fact that this was put to him by the prosecutor when he was being cross-examined. The State’s failure to allege in the charge sheet or alert the defence to its reliance upon common purpose is fatal to the convictions that were sustained on this basis. Absent reliance on common purpose, the State failed to discharge its *onus* to prove beyond a reasonable doubt that Mr Ntuli’s actions amounted to attempted murder.

In the circumstances of this case the State’s failure to have informed Mr Ntuli of its reliance on the doctrine of common purpose and nevertheless relying on that doctrine to convict him on the attempted murder counts was an infringement of his right to a fair trial. The full court ought to have upheld his appeal in respect of counts 6, 7 and 8.’

⁶ (128/2023) [2025] ZASCA 114 (30 July 2025), paras 15 and 16.

[19] The fact that the prosecutor did not allege common purpose when the charge was put to the appellant means that the appellant was not placed on notice that his criminal liability could be established through the acts of another person with whom he was alleged to have shared a common purpose. There is also no indication that the appellant was alerted to such a case during the proceedings. Once common purpose is excluded from consideration, the State was required to prove beyond reasonable doubt that the appellant himself committed the offences with which he was charged. Taking into account the facts of this case as well as the concession to this fact by the State, is proof that the evidence does not meet that threshold. It therefore follows that the court *a quo* erred in relying on common purpose as a basis for the appellant's conviction.

[20] Similarly, the issue of identity is central to this appeal. Neither of the complainants identified the appellant as one of the perpetrators. The record reflects that the complainants were unable to identify the intruders. The court *a quo* itself recognised that the appellant had not been identified by the complainants. The absence of direct identification is not, of course, necessarily fatal to a conviction. A conviction may properly follow from circumstantial evidence where the totality of the proved facts establishes the identity of the perpetrator beyond reasonable doubt.

[21] Identification evidence must nevertheless be approached with caution. In *S v Mthetwa*⁷ the Appellate Division warned that, because of the fallibility of human observation, identification evidence must be approached with caution and that the reliability of the observation must be tested with reference to factors such as lighting, visibility, eyesight, proximity, opportunity for observation, duration of observation, and other circumstances affecting reliability. The list is not exhaustive.

[22] The principle remains firmly established. In *S v Charzen and Another*⁸ the SCA in accentuating the dangers inherent in identification evidence, held that errors in description, particularly when unexplained and coupled with an absence of physical evidence, may create a reasonable doubt and said the following:

‘But, as our courts have emphasised again and again, in matters of identification honesty and sincerity and subjective assurance are simply not enough. There must in addition be certainty beyond reasonable doubt that the identification is reliable, and it is generally recognised in this regard that evidence of identification based upon a witness’s recollection of a person’s appearance can be ‘dangerously unreliable’, and must be approached with caution. This case illustrates the risks.’

[23] In the present matter the difficulty goes beyond the ordinary caution required in assessing identification evidence. There simply was no identification

⁷ 1972 (3) SA 766 (A) at 768 A to C.

⁸ [2006] ZASCA 147; 2006 (2) SACR 143 (SCA) para 10.

of the appellant by the complainants. Be that as it may, the State concedes that there is no evidence relating to the identification of the appellant. The State accordingly sought to establish the appellants connection with the offences principally through the cellular telephone evidence. That evidence must therefore be considered carefully.

[24] The court *a quo* placed substantial reliance upon the evidence of Mr Fishang Singh, the cellular telephone analyst. The evidence established is in essence that information obtained through a section 205 of the CPA process indicated that a SIM card associated with the appellant had subsequently been used in a cellular handset allegedly belonging to one of the complainants. The difficulty is that this evidence does not without more, establish that the appellant was the person who stole the cell phone. Nor does it establish that the appellant was present at the complainants' property when the offences were committed.

[25] Of particular importance is the absence of evidence establishing the relevant tower location and thereby placing the cell phone and consequently the appellant, at or near the scene of the offences at the relevant time. Likewise, the State concedes that Mr Singh did not provide the necessary evidence concerning the tower location to establish the movements of the cell phone from the time it was allegedly taken from the complainants until the time it was found in use by the appellant. In the absence of such evidence, the conclusion reached by the Regional Magistrate concerning the location at which the SIM card was inserted

was speculative. A court is not entitled to supplement evidence by inference where the inference itself depends upon facts which were never proved.

[26] The distinction between a legitimate inference and speculation is fundamental. An inference must arise from proved facts and should not be based upon conjecture. The court *a quo* further found that there was a contradiction between the appellant's version and the evidence of Mr Singh concerning the tower location. There was, however, no evidence from Mr Singh establishing the tower location relied upon by the Regional Magistrate. In those circumstances, the finding of a contradiction was not supported by the evidence. The same difficulty applies to the finding that the technical evidence established that the handset in which the SIM card was inserted belonged to the complainant.

[27] The investigation officer testified that a cell phone box had been handed to him by one of the complainants and that he obtained the IMEI number from that box. Yet, he could not recall the IMEI number himself and the evidence was not satisfactorily corroborated by the complainant's testimony concerning the identity or description of the cell phone. These evidential deficiencies were material and ought to have been considered in determining whether the State had excluded reasonable doubt.

[28] The State's case against the appellant was, in material respects, circumstantial. The classical principles governing circumstantial evidence were

laid down in *R v Blom*⁹ where the two cardinal rules were set out to be: (i) that the inference sought to be drawn must be consistent with all the proved facts and (ii) the proved facts must be such as to exclude every reasonable inference other than the one sought to be drawn. These principles have repeatedly been reaffirmed by our courts. In *S v Chabalala*¹⁰ where the SCA explained that the correct approach is to weigh all the elements pointing towards the guilt of the accused against those indicative of innocence, taking proper account of the inherent strengths and weaknesses, probabilities and improbabilities on both sides, and then determine whether the balance weighs so heavily in favour of the State as to exclude reasonable doubt. The question is therefore not whether the State's version is probable, or even more probable than the appellant's version. The question is whether the proved facts exclude a reasonable possibility that the appellant is innocent.

[29] The present matter has numerous features that are of significance, such as the fact that the complainants did not identify the appellant; no evidence places the appellant at the scene of the offences; no fingerprints linking the appellant to the scene were established; no DNA linking the appellant to the relevant motor vehicle or scene was established; and most importantly, the DNA found on the steering wheel of the recovered vehicle was that of accused number 1 and not that of the appellant. When these facts are considered cumulatively, rather than

⁹ 1989 AD 188 at 202–203.

¹⁰ 2003 (1) SACR 134 (SCA) at para 15.

selectively, the inference that the appellant was one of the perpetrators cannot be said to be the only reasonable inference. The cell phone evidence may, at its highest, establish that a SIM card associated with the appellant was subsequently used in a handset which the State alleged belonged to one of the complainants. It does not, without further evidence, establish how, when or from whom the appellant acquired the handset.

[30] It is entirely possible, on the evidence that the appellant acquired the cell phone after the commission of the offences without having participated in the robbery. His evidence is that he bought the aforesaid cell phone from a second hand shop and he had no knowledge of the fact that it was a stolen property. That possibility need not be shown to be probable. It need only be reasonably possible. As stated in *S v Van der Meyden*,¹¹ the State discharges its onus when the evidence establishes guilt beyond reasonable doubt, and the accused is entitled to an acquittal where there is a reasonable possibility that he might be innocent. The court went on to find that:

‘In order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. The two are inseparable, each being the logical corollary of the other. In whichever form the test is expressed, it must be satisfied upon a consideration of all the evidence.’

¹¹ 1999 (1) SACR 447 (W) at 448F–G.

[31] In the circumstances, the court *a quo* accordingly erred in treating the circumstantial and technical evidence as sufficient to establish the appellant's guilt beyond reasonable doubt.

[32] Furthermore, the appellant raised an alibi because his evidence was that he was in Rustenburg on 18 April 2018 and that he left on 19 April 2018 after having gone there in search of employment. His uncle testified in support of that version. The court *a quo* rejected the alibi as an afterthought. That approach cannot, with respect, be sustained merely because the appellant raised the alibi during the trial. The proper question is whether, having regard to the totality of the evidence, the alibi is reasonably possibly true.

[33] It is trite that an accused does not bear the burden of proving an alibi. The burden remains throughout upon the State to prove beyond reasonable doubt that the accused was at the scene and committed the offence. He is entitled to an acquittal if his version is reasonably possibly true. In the case of *R v Hlongwane*¹² the Court stated the following:

“The legal position with regard to an alibi is that there is no onus on an accused to establish it, and if it might reasonably be true he must be acquitted. R v Biya 1952 (4) SA 514 (AD). But it is important to point out that in applying this test, the alibi does not have to be considered in isolation. . .

The correct approach is to consider the alibi in the light of the totality of the evidence in the case, and the Court's impressions of the witnesses. In the Biya's case *supra*, Greenberg JA,

¹² 1959 (3) SA 337 (A) .

said at page 521 'if on all the evidence there is a reasonable possibility that his alibi evidence is true it means that there is the same possibility that he has not committed the crime'

It was again emphasised by the Appeal Court in the case of *S v Shabalala*¹³ where the Court stated the following:

'It is trite law that where an alibi is raised there is no burden on the accused to prove his alibi. The onus rests on the State to prove his alibi is false . . . The effect of the falseness of an alibi on an accused's case is to place him in a position as if he had never testified at all'. '

[34] Even if the appellant's alibi is not accepted as truthful in every respect, that does not relieve the State of its obligation to prove its own case beyond reasonable doubt. The rejection of an accused's version does not, by itself, constitute proof of the State's case. The totality of the evidence leaves a reasonable possibility that the appellant was not present when the offences were committed. The State has accordingly failed to exclude that reasonable possibility. A conviction cannot rest upon speculation, suspicion or probabilities falling short of the required standard of proof. The constitutional standard is proof beyond reasonable doubt. Therefore, having considered the record as a whole, I am satisfied that the State failed to discharge that onus. The convictions on all three counts therefore cannot stand.

¹³ 1986 (4) SA 734 (A).

Ad Sentence

[35] The State concedes that the court a quo relied upon the minimum sentence provisions of the Criminal Law Amendment Act 105 of 1997 in sentencing the appellant, notwithstanding that the charge sheet did not properly invoke the applicable provision and that the appellant was not forewarned at the commencement of the trial that the State would seek to rely upon those provisions. This is material because an accused must know, before pleading, not merely the factual allegations but also the nature of the case he or she is required to meet, particularly where the prosecution seeks to invoke a statutory regime carrying a prescribed minimum sentence.

[36] In *Msimango v S*,¹⁴ the SCA considered the importance of proper notice of the minimum-sentence regime and its implications for an accused's fair-trial rights. Likewise, in *Simelane v S*¹⁵ this Court held that

‘The law with regard to section 51 has now crystalized and it is very clear. An accused need to be informed with sufficient particularity exactly what the charge is and what it entails and if the Minimum Sentence legislation (Criminal Law Amendment Act 105 of 1997) is applicable, as well as what the minimum sentence might be. Failure to specify the exact sub-section and to warn the accused of the possible minimum sentence is a fatal defect and renders the sentence (and also the trial) unfair.’

¹⁴ Supra.

¹⁵ (CA 65/2019) [2021] ZANWHC 24 (19 August 2021) para 2.4

[37] The principle is consistent with the Constitutional Court's approach in *M T v S*; *A S B v S*; *September v S*¹⁶ where the Court stressed that the absence of a reference to the minimum sentence legislation in a charge sheet does not invariably determine the matter; the enquiry is whether, in the circumstances of the particular case, the accused's fair-trial rights were infringed. That approach is also expressly recognised in *Ntuli*.

[38] The appellant was not warned that the State intended relying upon the minimum sentence regime. The explanation was only given to him at sentencing stage when the magistrate said "Now, regarding the count 1, that of house breaking with intent to rob and robbery, the provisions of section 51(2) of Part 1 of Schedule 2 of Act 105 of 1997 are applicable in that the applicable sentence is 15 years". The issue was explained to the appellant only at the sentencing stage. Consequently, he was not afforded a proper and meaningful opportunity from the commencement of the trial to appreciate and understand the potential sentencing consequences arising from the charge he faced.

[39] It is trite that sentencing is primarily a matter within the discretion of the trial court. An appellate court does not ordinarily interfere merely because it would have imposed a different sentence. In *S v Malgas*¹⁷ the SCA explained the circumstances in which an appellate court may interfere with the sentence

¹⁶ [2018] ZACC 27; 2018 (2) SACR 592 (CC).

¹⁷ 2001 (2) SA 1222 (SCA) at para 12.

imposed by a trial court, including where there has been a material misdirection which vitiates the sentencing discretion. In the present matter, however, it is unnecessary to determine whether the individual sentences were disproportionate in the *Malgas* sense.

[40] The convictions themselves cannot stand. The sentences consequently have no legal foundation and must likewise be set aside.

[41] The appeal must be considered holistically against the cumulative circumstances which points to the fact that the complainants did not identify the appellant; there is no direct evidence placing the appellant at the scene; the physical evidence did not link the appellant to the scene or the recovered vehicle; as well as the fact that the State's cell phone evidence did not establish the relevant tower location. Furthermore, it should be taken into account that the State conceded to the fact that the court *a quo* improperly relied upon common purpose notwithstanding that the doctrine had not been alleged in the charge sheet or otherwise brought to the appellant's attention. Likewise, the doctrine of common purpose was not properly placed before the appellant which evinces the fact that the sentence also stands to be set aside.

[42] I accordingly conclude that the convictions are not sustainable and that the appeal against conviction must succeed. It follows axiomatically that the sentence imposed should also be set aside.

Order

[43] Resultantly, the following order is made:

- (i) Condonation for the late filing of the appeal is granted.
- (ii) The appeal against conviction and sentence on all three counts succeed.
- (iii) The conviction and sentence on all three counts are set aside.

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[REDACTED]

B MATLHAPE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

I agree

[REDACTED]

R HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For the Appellant:

Adv PT RANGWAKO

Instructed by:

KGOSI THABO LETSAPA ATTORNEYS

For the Respondent:

Adv T. NETSIANDA

Instructed by:

The Director of Public Prosecutions,
North West Province.

Date Heard:

06 February 2026

Date Handed Down:

01 September 2026