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

Not reportable

Case no: A187/2025

In the matter between:

M[...] D[...] T[...]

APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *MD T[...] v The State* (A187/2025) [2026] ZAFSHC 418
(3 September 2026)

Coram: MUSI JP *et* MHLAMBI J

Heard: 20 April 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The time and date for the hand-down is deemed to be 9h30 on 3 September 2026.

Summary: Criminal appeal – sentence – rape of a minor – biological father – s 51(1) of the Criminal Law Amendment Act 105 of 1997 – minimum sentence legislation – life imprisonment – substantial and compelling circumstances – personal circumstances – lack of remorse – victim impact statement.

ORDER

The appeal against the sentence is dismissed.

JUDGMENT

MHLAMBI J (MUSI JP concurring)

[1] On 13 August 2025, the appellant was convicted and sentenced to life imprisonment for rape. The grounds of appeal are, firstly, that the sentence of life imprisonment is shockingly harsh and inappropriate, and secondly, that the court erred in finding that there were no substantial and compelling circumstances to deviate from the prescribed sentence. The appeal is against the sentence only.

[2] The appellant substantiated the grounds of appeal as follows:

- (a) The complainant did not sustain any physical injuries, and no excessive violence was used during the commission of the offence;
- (b) The appellant pleaded guilty, and the complainant was spared the ordeal of testifying, thereby reducing the risk of exposing the complainant to secondary trauma;
- (c) The appellant made a confession at the time of his arrest and was accordingly not beyond rehabilitation;
- (d) The appellant was heavily under the influence of alcohol, which contributed to the commission of the offence; and
- (e) He spent ten months in custody.

[3] The appellant's personal circumstances are as follows: he was 34 years old at the time of sentencing, single, and had two children, both 12 years old. His highest qualification is Grade 11. At the time of the incident, he was attending a computer skills learnership and receiving compensation. He supported the children by contributing R500.00 per month. He was involved in a stabbing incident in 2018, during which he was stabbed in the spinal cord. He received a disability grant at the time of his arrest. He stated that he was remorseful and took full responsibility for his actions. He was arrested on 13 October 2024 and spent ten months in custody awaiting trial. He was a first offender.

[4] The state argued that the appellant is the complainant's biological father. He

was expected to be her provider, protector, and a shoulder to cry on, not the person who would rape her. He did not show genuine remorse until he realised that the evidence against him was overwhelming and that he had no choice but to plead guilty. Rape is a serious offence, and the courts must protect defenseless women and children. The court *a quo* did not misdirect itself. The sentence imposed was not shockingly, startlingly, or disturbingly inappropriate. It is in accordance with the law and cannot be faulted. The appeal should therefore be dismissed.

[5] The learned Judge thoroughly considered the appellant's personal circumstances but rejected his claim of remorse as mere regret for being caught. She noted that she afforded him sufficient opportunity under oath to explain his actions, but he failed to do so and resorted to semantics rather than boldly saying he was sorry for having raped his child. Rape leaves lifelong emotional and psychological scars on the victim. The victim's voice could be heard in the victim impact statement she furnished to the court. The court opined that for a 12-year-old to say she would never forgive her father for the rest of her life for what he did to her was profound. For a father to abuse and force sexual access to his daughter's body constitutes deflowering in the most grievous and brutal sense.

[6] The appellant requested that the court recognise his disability, incarceration, and guilty plea as substantial and compelling circumstances warranting a deviation from the prescribed sentence. The court found that, in this case, the appellant's personal circumstances must recede into the background. The fact that he pleaded guilty, spent ten months in custody awaiting trial, and was a first-time offender was immaterial.

[7] In *Malgas*,¹ it was stated that courts are required to approach sentencing with the understanding that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily, and in the absence of weighty justification, be imposed for the listed crimes in the specified circumstances. Unless there are truly convincing, observable reasons for a different response, the crimes in question are required to elicit a severe, standardised, and consistent response from the courts. In *Matyityi*,² it was stated that courts are not free to

¹ *S v Malgas* 2001 (1) SACR 469 (SCA) at 481H-482A.

² *S v Matyityi* [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) para 23.

subvert the will of the legislature by resorting to vague, ill-defined concepts or other equally vague and ill-founded hypotheses that appear to feed a particular sentencing officer's personal notion of fairness. Predictable outcomes, not those based on the whim of an individual judicial officer, are foundational to the rule of law, which lies at the heart of our constitutional order.

[8] In *Bailey*,³ the complainant was twelve years old when she was raped by the appellant, her biological father. The appeal against the sentence of life imprisonment was dismissed. The court held that the approach to an appeal from a sentence imposed under the Criminal Law Amendment Act 105 of 1997, should differ from that applied to other sentences under the ordinary sentencing regime because it prescribes minimum sentences. Such sentences cannot be departed from lightly or for flimsy reasons. It follows that a proper inquiry on appeal is whether the facts considered by the sentencing court are substantial and compelling.

[9] Relying on *De Beer*,⁴ it was argued, on behalf of the appellant, that it is important that an offender be sentenced as an individual and that, in every case, the prescribed minimum sentence should not be applied slavishly to guard against injustice. An injustice may occur if prescribed minimum sentences are imposed without proper consideration of substantial and compelling circumstances, including whether the prescribed sentence will be disproportionate to the offence, in the wide sense, that is, taking into account not only the offence itself but also the circumstances of the parties involved and the interests of society.

[10] This is exactly what the court *a quo* did, namely, to consider and to strike a healthy balance between the competing interests in the form of the appellant's personal circumstances, the seriousness of the offence, the interests of society and the victim.⁵ It is therefore incorrect to say that the court *a quo* imposed the sentence without proper consideration of substantial and compelling circumstances.

[11] The criticism of the judgment is unwarranted. The victim impact statement makes plain that the rape has had a very serious and deleterious effect on the

³ *Bailey v S* (454/2011) [2012] ZASCA 154; 2013 (2) SACR 533 (SCA) (1 October 2012) para 20.

⁴ *State v De Beer* [2017] ZASCA 183; 2018 (1) SACR 229 SCA para 19.

⁵ See page 37 of the transcribed record.

complainant for the rest of her life. She was twelve years old, and the appellant is her father. I am satisfied that the court *a quo* did not misdirect itself in finding that there were no substantial and compelling circumstances within the purview of s 51(3)(a) of the Criminal Law Amendment Act 105 of 1997.

[12] Accordingly, I hereby order as follows:

The appeal against the sentence is dismissed.

J J MHLAMBI
JUDGE OF THE HIGH COURT

I concur, and it is so ordered.

C J MUSI
JUDGE PRESIDENT OF THE HIGH COURT

Appearances

For the appellant:

Instructed by:

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Legal Aid South Africa,
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For the respondent:

Instructed by:

DW Bontes

National Director of Public Prosecutions,
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