



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case No: CAF 01/2026

Court a quo Case No: CC 09/2011

In the matter between:

PULE JACOB ROBERTS

Appellant

and

THE STATE

Respondent

Coram: Petersen J, Wessels AJ, Tsautse AJ

Heard: 24 July 2026

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, uploaded to CaseLines and released to SAFLII. The date and time for the handing down of the judgment is deemed to be 12h00 on 16 September 2026.

Summary: Criminal law and procedure - Appeal against conviction and sentence - Murder read with s 51(1) of the Criminal Law Amendment Act 105 of 1997 and robbery with aggravating circumstances read with s 1 of the Criminal Procedure Act 51 of 1977 - Conviction founded on circumstantial evidence - Test in *R v Blom* applied and satisfied - Unexplained recent possession of stolen property, active concealment through replacement of a SIM card, and an unexplained abrupt departure from the area, cumulatively excluding every reasonable inference other than guilt - Appellant's version not reasonably possibly true. On sentence - murder found to have been committed in the course of a robbery with aggravating circumstances to fall within Part I of Schedule 2 to the Minimum Sentences Act, rendering s 51(1) applicable - No

substantial and compelling circumstances shown - Condonation for the late filing of the notice of appeal granted - Appeal against conviction and sentence dismissed.

JUDGMENT

PETERSEN J (WESSELS AJ and TSAUTSE AJ concurring):

Introduction

[1] This is an appeal, with the leave of Judge President Hendricks granted on 23 January 2026 to the Full Court of this Division. The appeal lies against both the conviction and the sentence imposed on the appellant, Mr Pule Jacob Roberts, by Gura J sitting in this Division at Mmabatho on 14 June 2011, under case number CC 09/2011. The appellant was arraigned on two counts. On count 1, he was convicted of murder, read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 (“the Minimum Sentences Act”), and sentenced to life imprisonment. On count 2, he was convicted of robbery with aggravating circumstances, read with s 1 of the Criminal Procedure Act 51 of 1977, and sentenced to ten years’ imprisonment.

[2] The appellant, legally represented throughout the trial by Legal Aid South Africa, pleaded not guilty to both counts and exercised his right to remain silent when the charges were put to him. He testified in his own defence and called no witnesses.

[3] With leave to appeal granted on 23 January 2026, some fifteen years after the trial, the appellant filed the notice of appeal late. The appellant accordingly applies for condonation for the late filing. That application is not opposed, and it is convenient to dispose of it first.

Condonation

[4] The appellant’s attorney of record, Mr O Madiba of Legal Aid South Africa, deposes in a confirmatory affidavit that he only became aware of the order granting leave to appeal on 23 February 2026. By this time, the period prescribed for the filing of the notice of appeal had already lapsed. He explains that the delay in his becoming aware of the order arose because he had, during the relevant period, been occupied with circuit court trials and had, for a time, been incapacitated by illness, which

prevented him from attending to a number of his matters, including that of the appellant.

[5] The appellant, for his part, deposes that the delay is not attributable to any fault on his part, and that it arose from circumstances beyond his control, namely the conduct of his legal representative. He submits that there are reasonable prospects of success on appeal and asks that the late filing be condoned in the interests of justice.

[6] An applicant for condonation must furnish a full and reasonable explanation covering the entire period of delay, and the court must further have regard to the prospects of success on appeal, the importance of the case, and the interests of the administration of justice generally¹.

[7] The explanation furnished here, while not without its shortcomings, is a full one and the fault lies with the appellant's erstwhile legal representative rather than with the appellant personally. The appellant has at all times been incarcerated and dependent upon Legal Aid South Africa to prosecute his appeal. The respondent has not opposed condonation. The appeal raises issues that are not without merit. In the circumstances, and in the interests of justice, I am satisfied that condonation should be granted.

The factual background

[8] The charges arose from events occurring during the period 17 to 23 April 2010 at or near Majemantsho Village, in the district of Molopo. It was common cause at the trial, and remains common cause on appeal, that the deceased, Mr Thupi Petrus Solomone, an adult male, died during that period, and that a post-mortem examination recorded the cause of death as blunt neck and chest trauma, with fragmented fractures of the larynx and multiple fractures of the ribs on the right side of the chest. It was further common cause that, after the deceased's friend, Mr PB Oageng, raised the alarm, the police on 24 April 2010 forced open a padlock securing the only door to the deceased's dwelling and found his decomposing body on the floor. His right wrist had been bound with an electric cord to his left ankle, which was in turn bound to his right ankle and thence to the foot of the bed. A sponge had been placed over his body, and a knife lay on the floor between his feet.

¹*Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) para 6.

[9] The State's case was entirely circumstantial. No witness saw the appellant assault, rob or kill the deceased. The conviction also did not rest on any confession or admission. The appellant's warning statement was ruled inadmissible because, although he had indicated that he wished to exercise his right to legal representation, the investigating officer, Warrant Officer Makokwe, proceeded to take the statement without affording him the opportunity to do so. The oral admissions subsequently attributed to the appellant by Warrant Officer Makokwe were separately ruled inadmissible, on the distinct ground that they amounted to a confession which, in law, ought to have been taken down by a commissioned officer, which Warrant Officer Makokwe was not. The State accordingly relied, through the evidence of seven witnesses together with a photo album and a post-mortem report, on the following proved facts: that the deceased was last seen alive in the appellant's company; that his blue Motorola C116 cellphone, together with an unspecified sum of money, was missing when his body was discovered; that four days later the cellphone was found in the appellant's possession at a farm near Rooigrond, about fifteen to seventeen kilometres from Majemantsho; and that, in the interim, the appellant had disguised the cellphone's identity by removing and replacing its SIM card.

[10] Mr Oageng testified that the appellant was the last person seen in the deceased's company. Mr FP Ramokgele, a fellow farm worker, testified that the appellant arrived at Mooimeisies Farm near Rooigrond already in possession of the deceased's cellphone, and that the appellant asked him for a SIM card, which the appellant then used to replace the SIM card already in the phone. Warrant Officer Makokwe testified that the phone would not ring when, in the appellant's presence, he dialled the deceased's cell number with the SIM card then in the phone; but that when that SIM card was removed and replaced with a second SIM card recovered separately from a toiletry bag in the appellant's possession, the phone rang. This confirmed that the second SIM card was the deceased's own, and that the SIM card the appellant had inserted into the phone was not. The deceased's son, Mr M Solomone, was called to, and did, identify the cellphone itself as his late father's.

[11] The appellant testified in his own defence. His version was that the deceased owed him money and had given him the cellphone as security for that debt, to be redeemed once the deceased could repay him, and that he was not involved in the deceased's death. He conceded, under cross-examination, that he had left

Majemantsho for Viljoenskroon without notifying, or taking leave of, the aunt with whom he had resided for several years and could not explain why.

[12] The trial court rejected the appellant's explanation regarding the cellphone as false beyond reasonable doubt and found that his sudden and unexplained departure from the area counted against him. It convicted the appellant on both counts and, having found no substantial and compelling circumstances warranting a departure from the prescribed minimum sentence, sentenced him to life imprisonment on count 1 and ten years' imprisonment on count 2.

The grounds of appeal

[13] On conviction, the appellant contends, inter alia, that the State failed to prove beyond reasonable doubt that he killed the deceased, the only evidence connecting him to the killing being that he was the last person seen in the deceased's company; failed to prove that he robbed the deceased of either the cellphone or the undisclosed sum of money; the trial court erred in finding that he left Majemantsho urgently and without explanation, there being no evidence, in the absence of testimony from his aunt, that his departure was in fact unexplained or urgent. No urgency was demonstrated, given that he remained in the wider Mahikeng area for a further period. The trial court erred in rejecting, as false beyond reasonable doubt, his explanation that the cellphone had been given to him as security for a debt, merely because he had not disclosed this arrangement to his aunt.

[14] On sentence, the appellant contends, in the first instance, that the trial court never made a finding that the deceased was killed in the process of being robbed, and that the offence accordingly does not fall within Part I of Schedule 2 to the Minimum Sentences Act, so that the prescribed sentence was fifteen years' imprisonment under s 51(2), and not life imprisonment under s 51(1). In the alternative, he contends that the cumulative effect of his personal circumstances constituted substantial and compelling circumstances justifying a departure from the prescribed minimum sentence, and that a sentence of life imprisonment is in any event unwarranted and induces a sense of shock.

[15] The respondent opposes the appeal in its entirety and supports the reasoning and outcome of the court a quo on both conviction and sentence.

The approach of a court of appeal

[16] It is well established that a court of appeal will not lightly interfere with the factual and credibility findings of a trial court, which enjoyed the advantage of seeing and hearing the witnesses and was steeped in the atmosphere of the trial. Interference is warranted only where a material misdirection vitiates the reasoning of the trial court, or where the recorded evidence shows the findings to be clearly wrong². Where, as here, a conviction rests on circumstantial evidence, the two cardinal rules of logic set out in *R v Blom*³ apply. The inference sought to be drawn must be consistent with all the proved facts, and those facts must be such that they exclude every reasonable inference from them save the one sought to be drawn. The evidence, moreover, is not to be assessed piecemeal but as a mosaic, each strand tested against the whole.⁴ An accused's version need not be believed to be true before it is accepted. It suffices if it might reasonably be true, tested against the totality of the evidence, including the strength of the State's case.⁵

Analysis of the conviction

[17] The appellant's first two grounds may conveniently be dealt with together. It is correct that mere presence in the company of the deceased shortly before his death would not, without more, sustain a conviction. But that was not the whole of the State's case. The evidence, taken cumulatively, established that the appellant was found in possession of property positively identified as belonging to the deceased shortly after the deceased was last seen alive; that he took active steps to disguise that possession by procuring a substitute SIM card and replacing the one which had been in the phone; and that, when confronted with an innocent explanation for the phone's possession, that explanation was itself inherently improbable.

[18] Unexplained possession of recently stolen property, without more, may in appropriate circumstances found an inference of guilt of the underlying offence, including where the property was taken in the course of a robbery-murder. Here the inference is considerably strengthened by the appellant's conduct in relation to the

²*S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645e-f.

³*R v Blom* 1939 AD 188 at 202-203.

⁴*S v Chabalala* 2003 (1) SACR 134 (SCA) para 15.

⁵*S v Van der Meyden* 1999 (1) SACR 447 (W) at 449f-450b.

SIM card. A person who holds a cellphone openly and legitimately, as security for a debt owed to him, has no rational reason to turn off the means by which that phone can be reached on the number by which it was, to his knowledge, ordinarily known. The removal and replacement of the SIM card is conduct consistent only with a deliberate attempt to prevent the phone, and thereby its holder, from being traced through the deceased's contacts. That is conduct of concealment, not conduct consistent with the innocent holding of security for a debt.

[19] The appellant's unexplained and abrupt departure from Majemantsho for Viljoenskroon, without so much as taking leave of the aunt with whom he had lived for years, adds a further strand to the mosaic. Flight or abrupt departure, standing alone, must be approached with caution, since innocent people, too, sometimes act rashly out of fear of being wrongly implicated⁶. It does not stand alone here. Considered together with the appellant's recent and disguised possession of the deceased's cellphone, his departure is properly treated as corroborative of a consciousness of guilt rather than as an isolated and neutral fact.

[20] Applying the two rules in *Blom* to the proved facts cumulatively assessed, I am satisfied that the only reasonable inference to be drawn is that the appellant robbed and killed the deceased as charged. Where, as here, the State has proved its case beyond reasonable doubt, an accused whose version is not reasonably possibly true falls to be convicted⁷. The appellant's version, that the cellphone was given to him openly as security for a debt, is irreconcilable with his own conduct in disguising the phone's identity, and cannot reasonably possibly be true. No material misdirection has been shown in the trial court's evaluation of the evidence or in its rejection of the appellant's version.⁸. The appeal against conviction on both counts must accordingly fail.

Analysis of the sentence

[21] Part I of Schedule 2 to the Minimum Sentences Act prescribes life imprisonment for murder committed, among other circumstances, where the death of the victim was

⁶S v *Van Aswegen* 2001 (2) SACR 97 (SCA) para 8.

⁷ *Selebi v State* 2012 (1) SACR 209 (SCA) paras 40 and 43; see also *S v Selebi* 2012 (1) SA 487 (SCA) paras 42-44.

⁸S v *Francis* 1991 (1) SACR 198 (A) at 204C-E.

caused by the accused in committing, or attempting to commit, robbery with aggravating circumstances⁹. Part III prescribes a minimum sentence of fifteen years' imprisonment, in the case of a first offender, for murder falling outside the categories listed in Parts I and II.¹⁰

[22] The appellant submits that because the trial court did not, in terms, find that the deceased was killed "in the process of" being robbed, the murder falls to be sentenced under Part III and s 51(2), and not under Part I and s 51(1).

[23] The submission is unpersuasive. The classification of an offence under Schedule 2 depends on the facts found to have been proved, not on the particular form of words used by the trial court in expressing its findings. The judgment of the Supreme Court of Appeal in *Kekana v S*¹¹ is instructive in this regard. In relevant part, the SCA stated as follows:

'24 ... the purpose of reading a particular charge with the provisions of the CLAA is essentially two-fold. First, to alert the accused of the applicability of the prescribed minimum sentence. Second, to afford the accused an opportunity to place facts before the court on which a deviation from the prescribed sentence would be justified, nothing more. It follows therefore that a plea to a particular charge 'in terms of s 51(2)' without stating the facts why that sub-section, and not s 51(1), should be applicable, is a misnomer, and a mere surplusage. Its acceptance by the State has no bearing on the courts' power to consider an appropriate sentence on the charge to which an accused has been convicted of.

...

26 The sum total of the above observations is this. Where an accused is charged with an offence subject to or read with s 51(1) of the CLAA, and he or she wishes that, for purpose of sentence, s 51(2), instead of s 51(1), should be applicable, he or she must place facts before the court, why that should be the position. This is irrespective of whether he pleads guilty or not guilty. If he pleads guilty, and tenders a written statement in terms of s 112(2) of the CPA, those facts must clearly and pertinently appear in that statement.

⁹Criminal Law Amendment Act 105 of 1997, Schedule 2, Part I.

¹⁰Criminal Law Amendment Act 105 of 1997, Schedule 2, Part III.

¹¹ *Kekana v S* [2018] ZASCA 148; 2019 (1) SACR 1 (SCA); [2019] 1 All SA 67 (SCA).

27 In *S v Negondeni* [2015] ZACSA 132 para 11 it was explained that a statement in terms of s 112(2) handed in to support and explain a plea of guilty to a charge of murder ought to address such factors as the cause of death and the intention of the accused at the relevant time. Thus, a cryptic, unexplained reference to s 51(2) such as the one in the present case, is certainly not sufficient to mutate the sentencing regime from the purview of s 51(1) to s 51(2). It must be emphasised in this regard that even where such facts are stated, the discretion of the court to consider and impose an appropriate sentence remains extant.

28 In the particular circumstances of the present case, the trial court was entitled to consider life imprisonment as a sentencing option, irrespective of the State's acceptance of an unsubstantiated 'plea in terms of s 51(2)'.

[24] In casu, no witness spoke to the mechanics of the fatal assault. The evidence of what occurred inside the deceased's house is entirely circumstantial. But the proved facts, cumulatively assessed, admit of no reasonable inference other than that the killing and the taking of the deceased's property formed part of a single, uninterrupted course of conduct. The deceased sustained a fractured larynx and multiple rib fractures consistent with a sustained assault, not an isolated blow. He was thereafter bound hand and foot to his own bed with an electric cord, a sponge was placed over him, his cellphone and an unspecified sum of money were removed, and the house was locked from the outside on departure. There is no evidence, and none was suggested, of any interval between the infliction of the fatal violence and the taking of the deceased's property, nor of any separate motive or occasion for either. To the contrary, the manner of the deceased's restraint and the concealment of his body point to a person who knew him well and who acted to delay discovery and cover his tracks. There is accordingly no basis on the evidence for treating the killing and the robbery as distinct or unrelated events. On these facts, the murder was plainly committed by the appellant in the course of committing robbery with aggravating circumstances and falls squarely within Part I of Schedule 2. The trial court did not err in sentencing the appellant on count 1 on the basis that s 51(1) prescribed the applicable minimum sentence.

[25] That does not conclude the appeal against sentence since the appellant submits in the alternative that substantial and compelling circumstances existed which justified a departure from the prescribed minimum. The approach is settled. The

prescribed sentences are not to be departed from for flimsy reasons and ordinarily are to be imposed absent truly convincing reasons for a different course¹², an approach endorsed by the Constitutional Court¹³. All the factors traditionally relevant to sentencing continue to play a role but must be weighed together with the legislature's stipulation that the prescribed sentence should ordinarily be imposed. Where an offence is serious, an offender's personal circumstances recede into the background, and retribution and deterrence come to the fore. The consideration of personal circumstances is not thereby excluded. Still, it must not be viewed in isolation or elevated above the seriousness of the offence and the interests of society, the three factors identified in *S v Zinn*.¹⁴

[26] The personal circumstances relied upon by the appellant were that he was twenty-seven years of age at the time of the offence; that he had been diagnosed HIV-positive in 2006 and was on chronic medication, though not, on his own evidence, presently unwell; that he had two minor children, whom he had last seen in 2008 but towards whose maintenance he said he contributed when able; that his mother, resident in the Free State, was elderly; and that he had left school in standard 7 owing to his family's financial circumstances. None of these factors, whether taken alone or cumulatively with anything else placed before the trial court, constitute substantial and compelling circumstances. They must be weighed against the gravity of the offence, and against the fact that the appellant, though not previously convicted of an offence involving violence, was not a first offender, having twice been convicted of housebreaking and theft in 2004. The deceased was a defenceless man of about 55 years, attacked in his own home, bound hand and foot, robbed, and left to die behind a locked door. The prevalence of offences of this kind, and the legitimate interest of society and of the deceased's family in a sentence that reflects the seriousness of the crime, weigh heavily against any departure from the prescribed minimum¹⁵. No misdirection has been shown in the trial court's finding that no substantial and compelling circumstances were present, and this court, sitting as a court of appeal, is not at large to substitute its own view of sentence absent such misdirection or a striking

¹²*S v Malgas* 2001 (1) SACR 469 (SCA) para 25.

¹³*S v Dodo* 2001 (3) SA 382 (CC) para 11.

¹⁴*S v Zinn* 1969 (2) SA 537 (A) at 540G-H.

¹⁵*S v Arias* 2002 (1) SACR 518 (W) at 533J-534A; *S v Makhakha* 2014 (2) SACR 457 (WCC) paras 14-17.

disparity between the sentence imposed and that which this court would itself have imposed. Neither is present here.

[27] The sentence of ten years' imprisonment imposed on count 2 was not the subject of any distinct or developed submission and, applying the same principles, I can find no misdirection warranting interference with it. The sentence on count 2, I hasten to add, is in any event subsumed by the sentence of life imprisonment on count 1.

[28] It follows that the appeal against sentence on both counts must also fail.

Conclusion

[29] For these reasons, condonation for the late filing of the notice of appeal falls to be granted, but the appeal against both conviction and sentence must be dismissed.

Order

[30] In the result, the following order is made:

1. Condonation for the late filing of the notice of appeal is granted.
2. The appeal against the convictions and resultant sentences on counts 1 and 2 is dismissed.



A H PETERSEN

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

I agree.

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M WESSELS

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

I agree.

A handwritten signature in black ink, appearing to be 'T Tsaotse', is written over a solid black rectangular redaction box.

T TSAUTSE

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

Appearances

For the Appellant:	Mr O Madiba
Instructed by:	Legal Aid South Africa, Mahikeng Local Office
For the Respondent:	Adv E C Manicus
Instructed by:	Director of Public Prosecutions, North West