

REPUBLIC OF SOUTH AFRICA



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

(1) REPORTABLE: YES/ NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

02 September 2026

DATE

SIGNATURE

Case No: **A235/2025**

IN THE MATTER BETWEEN:

BONGANI SIBIYA

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT

MATJELE AJ

Introduction

1. This is an appeal against sentence arising from proceedings in the Regional Court, Pretoria. The Appellant was convicted on 3 August 2023, pursuant to pleas of guilty, of murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the CLAA"), possession of an unlicensed firearm, and unlawful possession of ammunition.
2. On 16 November 2023, the Regional Court sentenced the Appellant to life imprisonment on the murder count, 15 years' imprisonment in respect of the firearm offence and five years' imprisonment in respect of the ammunition offence. The determinate sentences were ordered to run concurrently with the sentence of life imprisonment.
3. The Appellant enjoys an automatic right of appeal by virtue of the sentence of life imprisonment imposed by the Regional Court. The present appeal is directed against sentence only.
4. The principal issue is whether the court a quo materially misdirected itself in finding that the Appellant's guilty plea, personal circumstances and period spent in custody awaiting finalisation of the matter, considered cumulatively, did not constitute substantial and compelling circumstances warranting departure from the prescribed sentence of life imprisonment.

Facts:

5. The circumstances surrounding the offences emerge principally from the Appellant's plea and the admitted evidence. On 10 September 2022 the deceased, a university student, was on his way home from university when the Appellant encountered him and decided to rob him of his cellular telephone. According to the Appellant's version, when the deceased placed his hand in his pocket, the Appellant panicked and shot him. The Appellant thereafter entered the motor vehicle being used and left the scene. The police stopped them a short distance away and found the firearm and ammunition in the Appellant's possession.

6. The Appellant pleaded guilty to murder, unlawful possession of the firearm and ammunition, and made the necessary admissions concerning the post-mortem findings and chain evidence. The murder was committed in the course of an attempted armed robbery, bringing it within **s 51(1), read with Part I of Schedule 2, of the Criminal Law Amendment Act 105 of 1997**, for which the prescribed sentence is life imprisonment unless substantial and compelling circumstances justify a lesser sentence.

Grounds of appeal

7. The Appellant contends that the court a quo failed to attach sufficient weight to his guilty plea, his personal circumstances and the approximately 14 months which he spent in custody awaiting finalisation of the trial. His personal circumstances included that he was 39 years old, had four children, had previously been employed, and had limited schooling.
8. It is submitted that those circumstances, considered cumulatively, constitute substantial and compelling circumstances within the meaning of section 51(3)(a) of the CLAA. The Appellant consequently contends that life imprisonment is excessively severe and that the sentencing court misdirected itself by failing to impose a lesser sentence.
9. The State opposes the appeal. It submits that there was no material misdirection and that the sentence imposed properly reflects the seriousness of the offence, the Appellant's personal circumstances and the interests of society. Of particular significance to the State's argument is the Appellant's previous conviction for murder, in 2004 for which he was sentenced to 10 years' imprisonment. Despite having been afforded an opportunity for rehabilitation, he subsequently committed another murder.
10. The trial court expressly considered the guilty plea and other mitigating factors cumulatively but concluded that they did not constitute substantial and compelling circumstances, particularly in the light of that previous conviction.

11. There is a distinction between **remorse and a guilty plea**. A guilty plea is certainly relevant, but it does not automatically establish genuine remorse, particularly where the accused did not testify in mitigation explaining his motivation or demonstrating insight into his repeated violent conduct. The State specifically relies, among others, on this fact. It makes the previous murder conviction particularly important when assessing rehabilitation and whether there is any convincing basis for departing from life imprisonment.
12. That previous conviction materially changes the sentencing enquiry. This is not a first offender whose conduct may plausibly be regarded as an isolated lapse. Despite having previously been convicted of murder and sentenced to ten years' imprisonment, the Appellant again unlawfully killed another person. This means the previous sentence did not achieve the desired deterrent or rehabilitative effect.

Issue

13. The question before this Court is accordingly not whether this Court might have imposed a different sentence had it sat as the court of first instance. The enquiry is whether the court a quo committed a material misdirection or imposed a sentence so disproportionate that appellate interference is warranted.

Law

14. It is trite that sentencing is pre-eminently a matter for the discretion of the trial court. An appellate court does not approach sentence as though it were exercising the sentencing discretion afresh. The appeal court's power to interfere is also limited. **S v Rabie 1975 (4) SA 855 (A)** establishes that sentence may be interfered with only where that discretion was not judicially exercised, because of a material misdirection or because the sentence is disturbingly inappropriate.
15. In **S v Pillay 1977 (4) SA 531 (A)** the Court explained that not every misdirection entitles an appellate court to interfere. The misdirection must be of such a nature, degree or seriousness that it demonstrates that the sentencing court failed properly or reasonably to exercise its sentencing discretion. Similarly, in **S v Kibido 1998 (2) SACR 214 (SCA)** it was reiterated that the determination of sentence falls

primarily within the discretion of the sentencing court, both in identifying relevant factors and in determining the weight to be attached to them.

16. In respect of prescribed minimum sentence regime, the governing principles were formulated in **S v Malgas 2001 (1) SACR 469 (SCA)**. *Malgas* does not require the sentencing court mechanically to impose the prescribed sentence. The court remains obliged to consider all circumstances relevant to sentence. At the same time, the prescribed sentence is not to be departed from lightly or for flimsy reasons. Ordinary mitigating circumstances do not necessarily become substantial and compelling merely because several of them are present. The ultimate enquiry remains whether, having regard to all relevant circumstances cumulatively, the prescribed sentence would be unjust or disproportionate.
17. The State correctly relies upon the warning in *Malgas* against departing from prescribed sentences based on speculative considerations, misplaced sympathy, marginal differences in personal circumstances or other considerations incapable of justifying departure from the legislative sentencing regime. Likewise, **S v Matyityi 2011 (1) SACR 40 (SCA)** emphasises that courts must give proper effect to the minimum-sentence regime and should depart from prescribed sentences only where truly convincing reasons exist.
18. Equally, the Appellant correctly relies upon **S v Vilakazi 2009 (1) SACR 552 (SCA)** for the proposition that the individual circumstances of the particular offence and offender remain important and that moral blameworthiness must be assessed on the facts of each case.
19. These principles are complementary rather than contradictory. A sentencing court must respect the legislative prescription while remaining alive to its constitutional duty to ensure that punishment remains proportionate to the offence, the offender and the legitimate interests of society.

Application:

20. The guilty plea is a mitigating consideration, but it cannot be viewed in isolation. A guilty plea may demonstrate acceptance of responsibility and save judicial

resources, but in this matter, it is substantially outweighed by the seriousness of the offence, the circumstances in which the deceased was killed, the use of an unlawfully possessed firearm, and particularly the previous conviction for the same grave offence.

21. The Appellant's guilty plea, his personal circumstances and the period spent in custody before sentence are mitigating factors and have been considered cumulatively. They do not, however, constitute substantial and compelling circumstances within the meaning of section 51(3)(a) of Act 105 of 1997. Of considerable significance is the Appellant's previous conviction for murder. Despite having previously been sentenced to a substantial term of imprisonment for taking another person's life, he again committed murder, this time during an attempted armed robbery. The previous sentence plainly failed to deter him from serious violent offending.
22. This attempted robbery offence was motivated by greed in terms of the Appellant's plea. He was drinking at a tavern in Mamelodi, decided to drive to Hatfield, a predominantly student populated area, where he could rob one student of a cell phone, sell it and buy more alcohol. It is while implementing his planned robbery, that he perceived resistance from the targeted student, and then shot him.
23. The proportionality enquiry does not produce a different result. The Appellant correctly stressed that life imprisonment is the most severe sentence available and requires careful consideration. But proportionality involves the **crime, the offender, the interests of society** and the impact on the victim and his family, not the offender's personal circumstances alone. The deceased was a university postgraduate student who was killed during an attempted robbery for a cellphone. The Respondent's heads also place emphasis on the impact of the killing upon his family and the prevalence and seriousness of violent crime.
24. In these circumstances the interests of society, deterrence, prevention and retribution assume considerable weight. The guilty plea, while deserving of appropriate recognition, cannot neutralise the seriousness of the offence or the compelling aggravating effect of the Appellant's antecedent conviction for murder.

Viewed cumulatively, the mitigating factors do not render the prescribed sentence unjust or disproportionate.

Whether the court a quo misdirected itself:

25. The Appellant has not demonstrated that the Regional Court overlooked any material mitigating circumstance. On the contrary, the argument advanced on appeal is substantially one concerning the **weight** which the sentencing court attached to the mitigating factors. A difference of opinion concerning the weight assigned to individual sentencing considerations does not, without more, amount to a material misdirection.
26. The Regional Court considered the guilty plea and the Appellant's personal circumstances. It considered the prescribed minimum sentence and whether substantial and compelling circumstances existed. It also considered the previous murder conviction. Its conclusion that the mitigating circumstances did not justify departure from life imprisonment was one which it was entitled to reach.
27. On these facts the sentencing court committed no material misdirection and its conclusion does not induce a sense of shock. There is consequently no basis upon which this Court is entitled to interfere with the sentencing discretion exercised by the court a quo. Life imprisonment remains an appropriate and proportionate sentence.
28. Applying the principles in *Rabie*, *Pillay* and *Kibido*, there is accordingly no proper basis upon which this Court may interfere. Even if this Court were entitled to consider sentence afresh, the cumulative circumstances would, in my view, justify the same result.

Order:

29. In the result, the following order is made:

1. The appeal against sentence is dismissed.

2. The sentence of life imprisonment imposed by the Regional Court in respect of the conviction for murder is confirmed.
3. The sentences imposed in respect of the firearm and ammunition convictions are confirmed.
4. The order that the determinate sentences be served concurrently with the sentence of life imprisonment remains undisturbed.


 L MATJELE AJ
 ACTING JUDGE OF THE HIGH COURT
 GAUTENG DIVISION, PRETORIA

I agree.


 L M MOLOPA- SETHOSA J
 JUDGE OF THE HIGH COURT
 GAUTENG DIVISION, PRETORIA

Appearances:

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Date of hearing:

2nd June 2026

Date of judgment:

2nd September 2026