IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A542/2016

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

09-June-2017
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DATE

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SIGNATURE

In the matter between:

TSEKISO PATRICK PANYANE Appellant

and

THE STATE Respondent

DATE OF HEARING : **24 APRIL 2017**

DATE OF JUDGMENT : **09 JUNE 2017**

JUDGMENT

MANAMELA, AJ

Introduction

[1] The appellant pleaded guilty and was convicted on 08 February 2016 on a count of rape of a four or five-year-old girl[1] by the Regional Court for the Gauteng Regional Division, Pretoria (the Trial Court). He was sentenced to life imprisonment on 11 May 2016, at the age of 26 years, in terms of the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentences Act).

[2] The current appeal is against sentence imposed on the appellant by the Trial Court. The appeal is before this Court, through the appellant's exercise of his automatic right of appeal.[2] The appellant had legal representation throughout the proceedings before the Trial Court.

Grounds of appeal (summarised)

[3] The appellant contends that the Trial Court misdirected itself by finding that no substantial and compelling circumstances existed to deviate from the statutorily prescribed minimum sentence of life imprisonment.[3] It is submitted, in this regard, that the personal circumstances of the appellant and mitigating factors, cumulatively constituted substantial and compelling circumstances, for deviation by the Trial Court from the sentence imposed. The State or respondent supports the sentence imposed by the Trial Court

Brief relevant background

[4] Considering that the appeal is only against sentence, after the appellant entered a plea of guilty, not much is available by way of background to the matter. However, from the

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[1] In terms of the charge sheet, the complainant was 4 years old at the time the rape occurred, but the appellant's plea explanation and the judgment state the age of the complainant at 5 years. See the charge sheet at p B; line 14 on p 2; line 6 on p 17; exhibit "A" on p 32 of the record.
[2] See section 10 of the Judicial Matters Amendment Act 42 of 2013.
[3] See section 51(3)(a) of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentences Act).

documents tendered by agreement, as exhibits, a clear picture emerges of the complainant; how the crime was committed and the appellant, as the perpetrator. From the charge sheet and brief plea explanation, it is stated that the complainant was four- or five-year-old girl, when she was raped by the appellant on or about 16 December 2010.[4] The rape occurred at an informal settlement in the Lyttleton area of Pretoria. The complainant was only 18 kilograms in weight at the time she was raped.

[5] According to the pre-sentence report the commission of the rape occurred under the following circumstances:

> "The accused reported that it was around 18:00pm to 19:00pm in the evening on 16th of December. He was intoxicated and he got beat up at the local bottle store earlier by a bottle on the head. After that incident, he decided to go and sleep. On his way to the shack he came across the victim and he sent her to the shop to go buy cigarettes for him and when she came back, the accused was already inside the shack, in his room. The victim gave the accused the cigarettes. The accused agrees that he was intoxicated but he stated that he will not put the blame on alcohol for what he did because he recalls that he had raped the victim. He also remembers that the victim screamed but no one heard her because his friend in the next room was playing loud music. When he was done he told the victim to go home and this was around 21: 00 pm. The accused did not know the victim prior the incident; she was just a random kid from the neighbourhood."[5]

[6] The Trial Court, naturally, relied heavily on the contents of the pre-sentence report when discharging its sentencing function. The report was also used by both the State and the defence in argument on an appropriate sentence.

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[4] See footnote 1 above.
[5] See par 16 of the pre-sentence report on p 44.

[7] The condition of the complainant and the injuries she sustained during the rape were recorded in the J88 Form (i.e. Report by authorised medical practitioner on the completion of a medico-legal examination).[6] The content of the J88 Form was also, by agreement between the State and the defence, admitted as part of evidence before the Trial Court. The injuries sustained by the complainant were of a very serious nature and included, tears and bleeding in her vagina. The Trial Court made extensive remarks about the complainant's injuries during sentencing.[7]

[8] The pre-sentence report contained extensive material on the personal circumstances of the appellant; impact of the crime on the complainant and suggestions as to sentencing options. As indicated above, this appeal turns on whether or not the Trial Court ought to have found existence of substantial and compelling circumstances on the cumulative weight of the appellant's personal circumstances and mitigating factors and consequently to have deviated from the prescribed minimum sentence of life imprisonment.

The appellant's personal and mitigating circumstances

[9] The appellant was born on 4 June 1989. He was 20 and half years old at the time of commission of the crime on 16 December 2010 and 26 years old at the time of receiving the life imprisonment sentence on 16 May 2016. The appellant is unmarried and has no children. His highest level of education is grade 9 (nine). His previous attempts to obtain matric appear to have been thwarted by his previous runs-in with the law and incarcerations. He was in and out of school and also spent time at a place of safety. He was unemployed at the time of committing the crime. He had previously had a drug abuse problem, but he told the probation

[6] See J88 Form on pp 51 - 53.
[7] See line 12 onwards on p 22 – line 6 on p 23 of the record.

officer that he was no longer using drugs, except for dagga. The pre-sentence report also stated that the appellant may have been molested as a child. His legal representative submitted that this may have had a bearing on the crimes for which he was convicted.

[10] On the other hand, the State submitted that whilst the fact that appellant had pleaded guilty to the charge is often an indication of remorse or acceptance of what he has done, the Trial Court has to consider this against the impact the crime will have on the complainant. According to the State the impact of the crime on the complainant will endure.

[11] The appellant's legal representative added, after the State had already made its submissions that, that the appellant was under the influence of alcohol at the time of commission of the crimes. However, it was pointed out that, this submission was not made as some form of defence to the crime, for which, by then, the appellant had already pleaded guilty and had been convicted. This was also stated in the pre-sentence report.[8]

Previous convictions

[12] Apart from what is stated above, there is the aspect of the appellant's previous convictions. The State proved only one previous conviction of assault, for which the appellant was convicted in 2007 in Senekal, Free State and ordered to serve a suspended sentence. This was accordingly recorded in terms of SAP69 or criminal record report, tendered in as exhibit at Trial Court.[9]

[8] See quotation from the report under par 5 above.
[9] See p 35 of the record.

[13] However, the State also referred to the conviction of the appellant on 25 April 2012 for attempted rape. The attempted rape was committed on 10 August 2008. The appellant was sentenced to 8 years' imprisonment for this conviction. This conviction was only recorded on the J14 report of the current matter on appeal,[10] but the appellant admitted both convictions, as previous convictions, duly assisted by his legal representative.[11] The appellant had also pleaded guilty in the attempted rape matter. It was submitted on his behalf, the attempted rape was committed around the same time as the rape, currently on appeal. This is obviously incorrect, as the rape was committed on 16 December 2010, more than two years after the attempted rape, which was committed on 10 August 2008. The appellant was already due for consideration for parole on the attempted rape conviction. The delay in the finalisation of the current matter, as explained by the State, was due to the DNA results taking time to become available and the complainant having moved to Mozambique and only returning a year before the trial.[12] The appellant had initially faced the two counts of attempted rape and rape together, but the State decided to proceed only with the one, as the other was not ready for the above-mentioned reasons.

[14] However, despite what is stated above, particularly regarding the dates of the appellant's conviction and sentence for the attempted rape, both of which dates clearly preceded the conviction in the rape charge, there appears to be some level of confusion as to whether the attempted rape conviction constituted a previous conviction. But, in my view, this ought not to be, as whether the conviction was before or subsequent does not make any difference. In *R v Zonele*,[13] it is stated that "a previous conviction may be described as one which occurred before the offence under trial", but there is no reason why a presiding officer

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[10] See p 36 of the record.
[11] See lines 22-23 on p 4; lines 9-11 on p 5 of the record.
[12] See pp 7-8 of the record.
[13] 1959 (3) SA 319 (A) at 330D-F.

"in deciding what particular form of punishment will fit the criminal as well as the crime, should not be informed of subsequent convictions, because of the light they may throw on the form of sentence which will be the most appropriate".[14] Therefore, the Trial Court, although it did not consider it a previous conviction, was correct in having regard to the appellant's conviction for attempted rape for purposes of sentencing in this matter.[15]

Sentencing by the Trial Court

[15] As indicated above, the Trial Court considered the contents of the probation officer's report compiled by Ms GH Ngwenya, a social worker from the Gauteng Department of Social Development. Apart from what is stated above, the Trial Court also referred to the other personal circumstances of the appellant, as reported by the probation officer. The Trial Court passed the following remarks in this regard. The appellant was still young and a juvenile, when he was convicted of the assault charge in 2007. He grew up with two other siblings.[16] They initially stayed with both their parents in the Free State and relocated to Pretoria/Johannesburg area in 1990, after the father got employment there. They stayed together as a family until 2005, when the relationship between their parents ended, due to continuous physical and emotional abuse of the mother by the father. Thereafter, the appellant went to stay with his mother, in an informal settlement. His sister or one of his other siblings moved back to the Free State to continue her education. In 2007 the appellant was committed to a place of safety and also sent for rehabilitation from all type of drugs, including *nyaope*. His mother tried to take the appellant back to the Free State for him to continue his schooling, but this did not work out. He later returned to Johannesburg and got a job at his father's place of employment. He lost this

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[14] See further *Mbuyase and Others v Rex*, 1939 NPD 228 at p 231; *R v Swart*, 1950 (1) SA 818 (T) at p 824; *R v Owen*, 1957 (1) SA 458 (AD) at p 462 F-G.
[15] See line 23 onwards on p 27 of the record.
[16] According to the pre-sentence report, the appellant has elder brother and sister, and a younger brother. See par 18 of the pre-sentence report on p 45 of the record.

employment after he was arrested. The appellant is more close to his mother than his father. According to the pre-sentence report, the appellant may have been sexually abused at the age of 14 years, but there is not much detail as to this, in the report.[17] The Trial Court noted this aspect, including other aspects, for purposes of the appellant's sentencing.[18]

[16] The Trial Court was alive to the fact that it was not only required to consider the personal circumstances of the appellant in determining existence of substantial and compelling circumstances in terms of the Minimum Sentences Act. But that it had to also have regard to other factors, including aggravating factors. The Trial Court considered the following to be aggravating factors: the child or complainant in this matter was weighing a mere 18 kilograms, when she was brutally raped by the appellant; at that age, she trusted the accused as an older person when she was sent by him to go and buy cigarettes and came back; the appellant abused the trust created; simply raped the child and thereafter sent her home with her injuries. This was "a cruel and a heartless act" by the appellant, the Trial Court, correctly so in my view, remarked.[19] The Trial Court also considered as an aggravating factor, the fact that the appellant had attempted to rape another young child of 11 years, two years prior to committing the rape whose sentence he is currently appealing. It held that the conviction for the attempted rape was highly relevant because it shows conduct of the accused,[20] which conduct has gravitated from attempted rape to actual rape.

[17] Further, the Trial Court recognised that at 21 years of age, the appellant was fairly young, but no longer youthful. Also, that the accused pleaded guilty, although he was "linked

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[17] See second paragraph of the pre-sentence report on p 46 of the record.
[18] See lines 21 – 24 on p 16; par 20 onwards on pp 45-49 of the record.
[19] See lines 15 – 16 on p 28 of the record.
[20] See par 14 above.

through strong DNA evidence".[21] In the Trial Court's view, admitting guilt is not necessarily indicative of remorse.[22] Whilst it appreciated that the appellant had accepted responsibility through his guilty plea, the Trial Court did not think that the showing of true remorse came to the fore.[23] As indicated above, the Court also took into consideration the fact that the appellant had very tough upbringing and may have been a victim of sexual offence, when he was younger. The Court also held that although the possibility of rehabilitation cannot be totally excluded, in "this type of case unfortunately the objects of sentencing namely retribution, and deterrence, and prevention comes [sic] to the fore very, very strongly".[24]

[18] In the end, the Trial Court found that, taking everything into consideration no compelling and substantial circumstances existed, allowing it to deviate from the prescribed minimum sentence and that no injustice will be done if the life imprisonment is imposed on the appellant. What is to be determined for purposes of this appeal is whether, as the appellant contends, the cumulative effect of his personal circumstances and mitigating factors ought to have swayed the Trial Court to impose a sentence other than for life imprisonment.

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[21] See lines 21 – 23 on p 25 of the record.

[22] See *S v Matyityi* 2011 (1) SACR 40 SCA at 47 par 13 in which the Supreme Court Appeal stated: "There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions. There is no indication that any of this, all of which was peculiarly within the respondent's knowledge, was explored in this case." [quoted without accompanying footnotes]

[23] See lines 12 – 19 on p 27 of the record.

[24] See lines 21 – 24 on p 28 of the record.

Cumulative effect of personal circumstances as substantial and compelling circumstances

General

[19] It was submitted that, in addition to the personal circumstances stated above, the following constituted substantial and compelling circumstances as contemplated in the provisions of the Minimum Sentences Act. The appellant pleaded guilty to the charge and therefore did not expose the complainant and the witnesses, that were to testify, to the hostile environment of the Court. It was further submitted that the appellant did not have a good upbringing and did not receive sufficient love, care and shelter and the opportunity to attend school and develop a sense of belonging. His parents' separation affected the love and care he should have received as a child.

[20] From the record, part of which is reflected above, the Trial Court clearly dealt with the personal circumstances of the appellant, as well as the mitigating and aggravating factors in the matter. It appreciated that the appellant had a very unpleasant upbringing, but pointed out that given the nature and circumstances of the crime, for which the appellant was convicted, the personal circumstances of the appellant, including that he was 20 years old, when he committed the crime, and 26 years old, when he was sentenced and his prospects of rehabilitation, ought to yield to the other objects of sentencing namely, retribution, and deterrence, and prevention.[25]

Appellant's age, background and rehabilitation prospects

[21] The Trial Court recognised the fact that the appellant, although not a juvenile at the time of commission of the crime, was "fairly young, but ...not youthful anymore at that age". I agree with this view.

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[25] See lines 21 – 24 on p 28 of the record.

[22] In terms of South African law children are defined as persons under the age of 18 years.[26] Therefore, although the appellant at 20 or 21 years of age was not strictly speaking a child or juvenile, there is no intrinsic magic in the statutory threshold of 18 years, as was pointed out in the decision of *Centre for Child Law v Minister of Justice And Constitutional Development & Others*.[27] Therefore, a sentencing court has to ensure that it does not perform its sentencing exercise arbitrarily, where the accused before the Court is slightly beyond the age of 18 years. The predicament that may befall a sentencing Court in this regard was highlighted in the decision of *S v Khoza*,[28] wherein one accused was 18 years old and the other 17 years and 10 months old. The Court held that under those circumstances it was not justified to differentiate the two accused's sentences, despite the technicality that they each fell into different sentencing categories.[29]

[23] Age of an accused or appellant alone does not suffice without more as was held in *S v Matyityi*:

> "[14] Turning to the respondent's age: what exactly about the respondent's age tipped the scales in his favour, was not elaborated upon by the learned judge. During the course of the judgment reference was made to the respondent's 'relative youthfulness', without any attempt at defining what exactly that meant in respect of this particular individual. It is trite that a teenager is prima facie to be regarded as immature and that the youthfulness of an offender will invariably be a mitigating factor, unless it appears that the viciousness of his or her deeds rules out immaturity. Although the exact extent of the mitigation will depend on all of the circumstances of the case, in general a court will not punish an immature young person as severely as it would an adult. It is well established that, the younger the offender, the clearer the evidence needs to be about

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[26] See section 28(3) of the *Constitution of the Republic of South Africa, 1996*; section 1 of the *Children's Act* 38 of 2005; section 1 of the *Correctional Services Act* 111 of 1998. See further Terblanche SS *A Guide to Sentencing in South Africa* 3rd ed (LexisNexis South Africa 2016) at par 3.1 and the authorities cited there.
[27] 2009 (2) SACR 477 (CC) at par 39.
[28] [2006] 1 All SA 89 (N).
[29] See *S v Khoza* at pp 98-99.

his or her background, education, level of intelligence and mental capacity, in order to enable a court to determine the level of maturity and therefore moral blameworthiness."[30]

[quoted without accompanying footnotes]

[24] In my view the appellant's relative youthfulness and unstable family background and upbringing, together with his prospects of rehabilitation were not sufficiently considered by the Trial Court. In fact, the Trial Court held that the possibility of the appellant's rehabilitation could not be totally excluded, but held that this was trumped, so to speak, by the other objects in sentencing, namely retribution, and deterrence, and prevention.[31] In my view, if there is a possibility of rehabilitation or in the Trial Court's words, if same cannot be totally excluded, the Trial Court ought to have balanced the other objects of sentencing, with rehabilitation. This is particularly so when dealing with an accused who is young or of relative youthfulness, like in this case. It ought to have imposed a sentence which, whilst achieving retribution, deterrence and prevention, allowed the possibility of the appellant's rehabilitation, slim as the Trial Court considered the prospects to be. Due to its failure to consider or its insufficient consideration of the prospects of the appellant's rehabilitation, particularly due to his youthful age, the Trial Court, in my view, misdirected itself in this regard. This calls for this Court to intervene and consider the issue of sentencing afresh.

[25] As to what may constitute appropriate sentence, one may, against the background of the specific circumstances of this matter, have regard to sentences imposed in comparable cases elsewhere. This ought not to be in the form of automatic transplant or copying of the sentences from other matters, but only as a guideline, dictated upon by the unique facts of this matter.

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[30] See *S v Matyityi* at p 47 par 14.
[31] See lines 21 – 24 on p 28 of the record.

[26] In the decision of a Full Court of this division in *S v MM; S v JS; S v JV*,[32] the Court dealt with appeals in three matters. The matter of *S v JS*, in my view, bore similarities to this appeal, although the appellant therein had pleaded not guilty. In the *S v JS* matter, the appellant was convicted for the rape of a 4-year-old girl. The complainant therein went to the appellant's house to play; the appellant sent her to fetch a spade and when she returned he took her into the house, ordered her to lie on a couch or sofa and raped her. The complainant was examined some three months after the rape, but medical evidence revealed that her hymen was no longer intact and there were signs of vaginal penetration. The appellant was a first offender and had just turned 18 when the rape took place. He had a difficult childhood. He was raised by his mother after his father had abandoned the family when he was about 10 years and, as a pupil, he scraped through life by selling biscuits and potato chips. He spent 14 months in custody awaiting trial. The High Court, after the matter was referred to it for sentencing in terms of section 52(1)(b) of the Minimum Sentences Act, found no existence of substantial and compelling circumstances. The Full Court on appeal held that the proceedings of sentence were only dealt with perfunctorily; that the learned judge moved from the premise that the appellant had the onus to convince the court that substantial and compelling circumstances existed and did not consider the determinative test set out in *S v Malgas*,[33] being whether or not when the circumstances of a particular matter are considered, "the prescribed sentence would be rendered unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice will be done by imposing that sentence".[34] For these reasons the Full Court found that there was misdirection entitling it to interfere and sentenced the appellant afresh. It held that, although rape is always a serious offence, particularly when the victim is young, but

[32] 2011 (1) SACR 510 (GNP) (*per* Southwood J, Makgoka J and Kollapen AJ (as he was then)) at pars [15] – [17].
[33] 2001 (1) SACR 469 (SCA).
[34] See *S v MM; S v JS; S v JV* at par [18].

that in this matter it was "not dealing with the category of the worst rapes" and that this ought to be considered for arriving at an appropriate sentence.[35]

[27] Whilst highlighting the need to avoid disproportionality, the Full Court (still in the decision of in *S v MM; S v JS; S v JV*) quoted from the decision of *S v Vilakazi*[36] as follows:

> "[14] It is only by approaching sentencing under the Act in the manner that was laid down by this court in *S v Malgas* - which was said by the Constitutional Court in *S v Dodo* to be 'undoubtedly correct' - that incongruous and disproportionate sentences are capable of being avoided. Indeed, that was the basis upon which the Constitutional Court in *Dodo* found the Act to be not unconstitutional. For by avoiding sentences that are disproportionate a court necessarily safeguards against the risk - and in my view it is a real risk - that sentences will be imposed in some cases that are so disproportionate as to be unconstitutional. In that case the Constitutional Court said that the approach laid down in *Malgas*, and in particular its 'determinative test' for deciding whether a prescribed sentence may be departed from, makes plain that the power of the court to impose a lesser sentence can be exercised well before the disproportionality between the mandated sentence and the nature of the offence becomes so great that it can be typified as gross [and thus constitutionally offensive].
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> That 'determinative test' for when the prescribed sentence may be departed from was expressed as follows in *Malgas* and it deserves to be emphasised:
>
> If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.
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> [15] It is clear from the terms in which the test was framed in *Malgas* and endorsed in *Dodo* that it is incumbent upon a court in every case, before it imposes a prescribed sentence, to assess, upon a consideration of all the circumstances of the particular case, whether the prescribed sentence is indeed proportionate to the particular offence. The Constitutional Court made it clear that what is meant by the 'offence' in that context (and that is the sense in which I will use the term throughout this judgment unless the context indicates otherwise) consists of all factors relevant to the nature and seriousness of the criminal act itself, as well as all relevant personal

[35] See *S v MM; S v JS; S v JV* at par [19].
[36] 2009 (1) SACR 552 (SCA) pars 14, 15 and 18.

and other circumstances relating to the offender which could have a bearing on the seriousness of the offence and the culpability of the offender.

If a court is indeed satisfied that a lesser sentence is called for in a particular case, thus justifying a departure from the prescribed sentence, then it hardly needs saying that the court is bound to impose that lesser sentence. That was also made clear in *Malgas,* which said that the relevant provision in the Act vests the sentencing court with the power, indeed the obligation, to consider whether the particular circumstances of the case require a different sentence to be imposed. And a different sentence must be imposed if the court is satisfied that substantial and compelling circumstances exist which *'justify'* . . . it."

...

[18] It is plain from the determinative test laid down by *Malgas*, consistent with what was said throughout the judgment, and consistent with what was said by the Constitutional Court in *Dodo*, that a prescribed sentence cannot be assumed a priori to be proportionate in a particular case. It cannot even be assumed a priori that the sentence is constitutionally permitted. Whether the prescribed sentence is indeed proportionate, and thus capable of being imposed, is a matter to be determined upon a consideration of the circumstances of the particular case. It ought to be apparent that when the matter is approached in that way it might turn out that the prescribed sentence is seldom imposed in cases that fall within the specified category. If that occurs it will be because the prescribed sentence is seldom proportionate to the offence. For the essence of *Malgas* and of *Dodo* is that disproportionate sentences are not to be imposed and that courts are not vehicles for injustice."

Conclusion

[28] In my view, in this matter the disproportionality in the sentence imposed and the crime came about due to the disregard of the appellant's prospects of rehabilitation. It is also my view that the circumstances of this matter justified a deviation from the prescribed sentence for life imprisonment.

[29] However, this cannot depart from the fact that the appellant was convicted of crime of a heinous nature, whose effect will, no doubt, endure for a considerable time or even the rest

of the life of the complainant. The appellant is also not a first offender and was shortly before being convicted of this rape already convicted of an attempted rape, also involving a minor child. He needs to be sent away for a period he will appreciate the repercussions of his actions and perhaps return to society a changed man. In my view the appropriate sentence will be imprisonment for a period of 20 years. This sentence will be antedated.

Order

[30] In the result, I propose that the following order be made:

[30.1] the appeal against sentence is upheld;

[30.2] the sentence of the Regional Court for the Gauteng Regional Division, Pretoria is set aside and the following is substituted for it:

"1. The accused is sentenced to imprisonment for a period of 20 years, and

2. The order in 1 is antedated to 11 May 2016.

K. La M. Manamela

Acting Judge of the High Court

09 JUNE 2017

JW LOUW

Judge of the High Court

I agree and it is so ordered