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**IN THE HIGH COURT OF SOUTH AFRICA**

**(Gauteng Division, Pretoria)**

Case no: A7/2024

(1) REPORTABLE: ~~YES~~ / NO

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

(3) REVISED.

DATE: 20 March 2025

SIGNATURE

Judgment Reserved: 11 March 2025

Judgment handed down: 20 March 2025

In the matter between:

**SIBUSISO RICHARD MORAPEDI**

**APPELLANT**

**AND**

**THE STATE**

**RESPONDENT**

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**JUDGMENT**

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**STRIJDOM, J**

1. On 7 August 2022 the appellant appeared in the Springs Regional Court on two counts of rape of a minor child read with the provisions of section 51(1) of Act 105 of 1997. The appellant had legal representation and pleaded not guilty to both charges.<sup>1</sup>

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<sup>1</sup> Record: p1 line 11 to p 3 line 8

2. The appellant was subsequently convicted on both charges and on 23 October 2023 he was sentenced to life imprisonment on both counts. It was ordered that the sentences must run concurrently in terms of section 280(2) of the Criminal Procedure Act.<sup>2</sup>
3. On 6 November 2023 the appellant filed a notice of appeal in relation to sentence only.
4. As the appellant was sentenced to life imprisonment in the Regional Court, he has an “automatic right” to appeal to the High Court on notice being given.
5. The complainant is Q[...] M[...] who was eight years old at the time of the offences. On 6 August 2022 Mr. Shongwe, a nurse at Far East Rand Hospital examined her and found that her hymen was irregular, and she also had bumps and clefs. On 15 August 2022 the child was examined by Dr Mgudloa, who found on gynaecological examination that her clitoris, urethral and labia minora had bruises. The doctor also found that she had fresh tears, bumps and clefts. The complainant was sexually penetrated seven times by the appellant while on parole.
6. The following mitigating circumstances were placed on record by the legal representative of the appellant.
  - 6.1 He was 37 years old at the time of sentencing;
  - 6.2 He is unmarried but has a minor child aged one year and 11 months.
  - 6.3 His highest scholastic qualification is standard 8 (grade 10).
  - 6.4 He was employed at a construction business where he earned R1 300-00 per month.

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<sup>2</sup> Record: p 319 line 6-10

- 6.5 He has no previous convictions for sexually related offences and should be considered as a first offender.
  - 6.6 The Court must take into consideration the interest of the appellant's minor child.
7. The following aggravating circumstances were placed on record by the State:
- 7.1 The victim was only eight years old at the time of the offences;
  - 7.2 The appellant showed no remorse;
  - 7.3 The victim suffered physical pain, emotional and psychological pain.<sup>3</sup>
  - 7.4 The victim was sexually penetrated seven times.
  - 7.5 The victim was raped twice whilst the appellant was released on parole.
  - 7.6 The appellant have four previous convictions of robbery, two of housebreaking with intent to steal and theft and two previous convictions of theft. He was released on parole in 2020.
8. The following factors were taken into account during sentence by the trial Magistrate:
- 8.1 The Court was mindful of the foundational sentencing principles that the punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy.
  - 8.2 That the main purpose of sentencing is retribution, deterrence, prevention and rehabilitation.
  - 8.3 The personal circumstances of the appellant.
  - 8.4 The Court properly considered the Victim Impact Report and indicated the trauma the victim experienced.
  - 8.5 The Court considered the interest of the appellant's child.
  - 8.6 The Court considered the gravity of the offences.
  - 8.7 The Court considered the legislation applicable and stipulated that the Court can only deviate from the minimum prescribed sentence if there are

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<sup>3</sup> Medico-Legal Examination, Exhibit "E" Record p330: Victim Impact Statement Exhibit "F" Record p366

substantial and compelling circumstances which will justify a lesser sentence.

9. The appellant alleges that the Court erred on the following issue:

9.1 That there were no substantial and compelling circumstances justifying the imposition of a lesser sentence than life imprisonment.

10. The Court in *State v Motau*<sup>4</sup> indicated that it is trite that the imposition of sentence is pre-eminently for the discretion of the trial Court. A Court of appeal will only interfere in the sentence where the trial Court has failed to exercise its discretion judicially or where the sentence is vitiated by irregularity or is disturbingly inappropriate.

11. In my view, the trial Court's approach to sentence, as is evident from the judgment, cannot be faulted and there is no basis for interference with the imposed sentences.

12. The Supreme Court of Appeal made it very clear in *S v Matyityi*<sup>5</sup> that the prescribed minimum sentences are not to be departed from lightly. The Court held on 53F: "Courts are not free to subvert the will of the legislature by resort to vague ill-defined concepts such as "relative youthfulness" or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes 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."

13. The Court *a quo* in my view was correct in the assessment of the factors in mitigation and aggravation of sentence to find no substantial and compelling circumstances to justify a deviation from the mandated sentence. For these

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<sup>4</sup> (A53/2023

<sup>5</sup> *S v Maty*(2010) ZA SCA 127 2011 (1) SACR 40 SCA

offences the prescribed minimum sentences is the benchmark and should ordinarily be imposed in the absence of substantial and compelling circumstances which justifies the imposition of lesser terms of imprisonment than that provided for in section 51(1) of the CLAA.<sup>6</sup>

14. I conclude that the trial Court exercised its sentencing discretion judicially and there is no basis at all for interference with the imposed sentences.

15. In the result, the appeal is dismissed.

JJ STRIJDOM  
JUDGE OF THE HIGH COURT OF  
SOUTH-AFRICA, GAUTENG DIVISION,  
PRETORIA

I agree and it is so ordered.

MAZIBUKO AJ  
ACTING JUDGE OF THE HIGH COURT  
OF SOUTH-AFRICA, GAUTENG  
DIVISION, PRETORIA

APPEARANCES:

For the appellant:	Adv Botha
Instructed by:	Legal Aid SA
For the respondent:	Adv M Masilo
Instructed by:	Office of the Director of Public Prosecutions

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<sup>6</sup> See S v Malgas 2001 (1) SACR 469 (SCA)