

SOUTH AFRICA / JUDGMENT

A.Z v S (Appeal) (A41/2025) [2025] ZAWCHC 340 (11 August 2025)

[2025] ZAWCHC 340**COURT**

Western Cape High Court, Cape Town

BEFORE

J Cloete, R Mphego

CASE / FILE NUMBER

A41/2025

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(WESTERN****CAPE DIVISION, CAPE TOWN)****Case No: A41/2025****In****the matter****between:**

A[...]

Z[...]

Appellant

and

THE

STATE

Respondent

Court: Justice J

Cloete et Acting Justice R Mphego

Heard: 8 August

2025

Delivered

electronically: 11 August 2025

JUDGMENT

CLOETE J:

- [1] The appellant faced three counts in the Paarl Regional Court, namely (1) the murder of his 10 year old female cousin; (2) her rape on a prior occasion/s; and (3) defeating or obstructing the course or administration of justice by concealing her body after the murder to prevent discovery thereof. At the time of the murder, which occurred on 6 January 2023, the appellant was 18 years old (he had attained the age of 18 years on 21 July 2022) and thus, if convicted, he was liable to be sentenced to life imprisonment in terms of s 51(1)(a) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act (the 'CLA')[1]. The rape(s) were alleged to have occurred during the period January to December 2020, when the appellant was 15 or 16 years old, and the deceased only 6 or 7 years old. Given that at the time the appellant was a minor, in the event of conviction the relevant provisions of the Child Justice Act[2] were applicable to sentencing on the rape(s) count.
- [2] On 1 July 2024 the appellant pleaded guilty to the counts of murder and rape (but only in respect of a single rape during January
- 2020) and not guilty to the count of defeating or obstructing the course or administration of justice. The state accepted the written contents of his plea explanation in respect of the murder and rape counts tendered in terms of s 112 (2) of the Criminal Procedure Act[3]. It then closed its case in respect of the third count without adducing any evidence. The trial court convicted the appellant on the first and second counts and acquitted him on the third count.
- [3] On 19 September 2024 the appellant was sentenced to life imprisonment for the murder and 20 years imprisonment for the rape (the sentence of 20 years imprisonment was antedated to 31 December 2020). These sentences automatically run concurrently.[4] He now exercises his automatic right of appeal to this court against the sentence of life imprisonment.[5] He has not sought leave to appeal in respect of the sentence for rape.
- [4] The evidential material before the trial court in respect of the murder conviction and the appropriate sentence to impose was as follows. At the time of the murder the appellant resided with the deceased and her mother who is his maternal aunt. On the day in question the deceased was left in his care. The appellant and the

deceased were playing games. According to the appellant's plea explanation he became 'troubled by what had occurred during January 2020. I choked her, we both fell over and still overcome by fear of what had happened, I proceeded to force her head under the water and drown her in a bath. When she was no longer breathing I placed her in a kist in the bedroom'.

- [5] In the same plea explanation, the appellant admitted the contents of the report of Dr Erasmus who conducted the post-mortem. Dr Erasmus recorded the following injuries to the deceased: petechial

haemorrhages of the lower eyelids; bloody froth in the nose, mouth and trachea; petechial haemorrhages of the inner aspect of the scalp with brain swelling; petechial haemorrhages and congestion of the lungs; hyperfluidity of the blood consistent with drowning;

congestion of the liver and kidneys; abrasion on the inner aspect of the left thigh; the introitus red and inflamed and the hymen absent, and a small contusion of the right vaginal wall. She found the latter injuries to be consistent with long term sexual intercourse. She also concluded that the cause of death was consistent with asphyxia due to drowning, but that partial suffocation/manual strangulation could not be confirmed. The report of Dr Erasmus thus indicates that the deceased had also in all likelihood been sexually assaulted in some way immediately prior to her death, and was murdered in a brutal manner.

- [6] On 1 June 2023 (about a year before the appellant pleaded) he was assessed by psychiatrist Dr Prinsloo of the Paarl Hospital Psychiatric Unit at the request of the appellant's mother and legal representative in order to determine whether he was fit to stand trial, seemingly as a result of the difficulty in obtaining

instructions and his prior admission to a psychiatric unit sometime in 2021 after a suicide attempt. Dr Prinsloo found that the appellant had a substance abuse disorder (in partial remission as a result of being incarcerated); that there was no indication of psychosis or mood disorder; but that he most likely has an antisocial personality disorder. He found the appellant to be 'sane and fit to plead'. The report of Dr Prinsloo was admitted into evidence by consent.

- [7] The appellant and/or his mother and/or his legal representative were not satisfied with the conclusion reached by Dr Prinsloo, and procured a second opinion from clinical psychologist Ms Suliman, who delivered her report on 15 April 2024. This report was also admitted into evidence during the sentencing proceedings at the request of the trial court. Whereas in the earlier report of Dr Prinsloo no mention was made thereof, the report of Ms Suliman reflects that the appellant told her he had sexual intercourse and murdered the deceased on instructions of 'voices in his head that told him to do so'. Ms Suliman found the results of his mental status examination revealed that the appellant's cognitive ability was not compromised; he presented as being of average to above average intellect; was able to respond to complex questions in an acceptable format with above average rationality, and displayed no signs of aggression. She noted his level of intellectual ability despite the common cause fact that he effectively dropped out of school in Grade 7 due to behavioural and truancy issues.

[8] She also reported that the appellant displayed no signs of memory lapse or distortion but there was evidence of him being manipulative and a liar, particularly having regard to previous documented conflicting accounts he had given of the events pertaining to the murder of the deceased. In her opinion there was adequate evidence to show the appellant was not truthful about the events on the day of the murder and his sexual assaults on the deceased over an

extended period. She rejected his explanation of having committed the offences as a result of ‘voices in his head’,

explaining that that this was a feature of psychosis whereas, like Dr Prinsloo, she found no evidence of this condition, or indeed of any mood disorder. In her opinion he displayed no remorse. She agreed with Dr Prinsloo’s diagnosis of an antisocial personality

disorder and that he was fit to stand trial.

[9] The pre-sentence report of the probation officer Ms Adams, who is a social worker (also handed in by consent), reflected that the appellant had conveyed his feelings of rejection and abandonment by his absent father whom he had never met, compounded by his mother having told him that a certain man was his father, only for him to

discover this to be untrue. The appellant was not able to inform Ms Adams whether he had been diagnosed with any illness, but stated that he was taking medication which helped with ‘the voices’ and was attending ‘psychological services’ in prison (the appellant had been incarcerated since the day of the incident on 6 January 2023 after handing himself over to the police and confessing). The appellant is also a first offender.

[10] The report also described in some detail the devastating effects which the deceased’s murder had on her biological parents, in particular her mother, who had become suicidal and was referred for treatment. This was corroborated by the evidence of Ms Van Wyk who testified in aggravation of sentence. She was the designated court preparation officer at the Paarl Regional Court who interviewed the deceased’s mother. Such was her emotional state that Ms Van Wyk was unable to obtain a written victim impact statement from her. With the permission of the trial court and consent of the defence, Ms Van

Wyk played an audio recording of the account given to her by the victim’s mother of her trauma, which was heart wrenching.

According to the mother she had even visited the appellant in prison to seek answers for his actions, but he refused to engage with her which compounded her trauma. The deceased’s father had described her to Ms van Wyk as ‘a joyful, friendly, vibrant little girl’. Both of the deceased’s parents felt particularly shocked and betrayed by the fact that the appellant was a family member whom they had trusted.

[11] In her evaluation, the opinion of Ms Adams was as follows. The appellant ‘has deep-seated feelings of alienation and a desire for acceptance which have significantly impacted his relationships and behaviour. He has a strained relationship with his mother, contributing to his sense of isolation. In an attempt to fill this void [the appellant] may have developed an unhealthy obsession with his alleged father. This may be viewed as a compensatory mechanism to address the feelings of loss and rejection he experienced due to the absence of a paternal figure in his life... [the appellant] does take responsibility for his alleged actions but consistently claims that voices instructed him to commit this offence. This statement

indicates a potential detachment from reality and deflection of responsibility for his actions by blaming the voices.’ Ms Adams however fairly acknowledged that what also needed to be weighed into the mix when considering an appropriate sentence were the seriousness of the crime, the views of the deceased’s family and the interests of society. She concluded that only direct imprisonment could be considered, and that such a sentence ‘could be seen as an opportunity for rehabilitation, where the access to educational and rehabilitative programs designed to address the underlying causes of criminal behaviour could be facilitated.’

[12] I am mindful of the practical constraints under which probation officers work. I must also however assess the opinions expressed by Ms Adams against the following. She did not conduct any clinical evaluation of the appellant, as did Dr Prinsloo and Ms Suliman. She is also of a different professional discipline to them, and it was common cause they were eminently qualified to diagnose the appellant. The appellant’s alleged feelings of abandonment were not mentioned at all in the report of Dr Prinsloo and it is fair to accept that if they were conveyed to him, he would have referred to them. The report of Ms Suliman reflects that according to the appellant, the reason he attempted suicide was ‘linked to his mother not being forthcoming as to who his father was...and to him being beaten and starved by his mother’s partner’. It would seem that the appellant thus gave different explanations to Ms Suliman and Ms Adams. It would also seem that the ‘remorse’

expressed by the appellant to Ms Adams was in truth regret, something completely different and relevant to his prospects of genuine

rehabilitation, particularly when regard is had to his belated reliance on ‘voices’ in his head.

[13] In addition, it was Ms Suliman’s professional opinion in her report that ‘when an individual suggests that he hears voices in his head giving him instructions of what to do, the individual is usually in a state of psychosis, and free will is compromised [since] specific instructions are provided by the “voices in the head”. The [appellant], when describing the sequence of events on the day of the murder, inadvertently on some occasions, stated that he thought that he should close the curtains, in case anyone caught him in the act of murder; he stated that strangulation was not working, and that drowning was the better option. He thought of how to get rid of the body...saw the kist and thought it the best option to conceal [it]. He thought that he should clean the room and house to firstly ensure that they were no traces of the murder, and secondly to clean the entire house to provide evidence of how he spent his

day' (it was not disputed this in fact occurred). Ms Suliman found this to be direct support for no evidence of psychosis, and concluded that at the time of committing the murder there was no doubt the appellant was aware that what he was doing was wrong.

- [14] The appellant's legal representative addressed the trial court ex parte in mitigation of sentence. She placed on record the appellant's personal circumstances as follows. He was by then 20 years old, and the eldest of 4 children aged 11 or 12, 5 and 2 years respectively, one of whom was a little girl. His limited employment experience had been at a carwash. According to him, he had attempted suicide more than once. He had felt rejected by his absent father. She submitted that he had already been punished to an extent by attempting suicide 'because this is something that he cannot come to terms with', referring to the rape of the deceased back in 2020. She also submitted that the appellant had taken 'full responsibility for the offence ...and this is set out in both reports'.
- [15] In terms of s 51(3)(a) of the CLA a court may deviate from a prescribed minimum sentence if satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence. The appellant's legal representative submitted that these circumstances were: (1) his youth; (2) the period he spent in custody awaiting trial of 20 months; (3) that he had handed himself over to the police; and (4) that he abandoned his bail application. Finally, she submitted that 'with a different program in prison...he will be rehabilitated', presumably referring to whatever counselling and treatment he was receiving there, although the record is silent on the exact nature thereof.
- [16] On the other hand the state submitted that the particularly aggravating factors were:
- (1) the age of the deceased and the brutal manner in which she lost her life; (2) the appellant was not only a family member who had been provided with a roof over his head by the deceased's mother, but was also in a position of trust;
 - (3) the appellant's actions had escalated from rape to murder over a considerable period of time; (4) the facts had established premeditation; and
 - (5) the devastating effect of the murder on the deceased's parents. These, it was submitted, had to outweigh any mitigating factors, in addition to which a lesser sentence than life imprisonment would not be in the interests of society.
- [17] The state also pointed out, correctly in my view, that the actual motive for the murder remained unclear, and the appellant had never come clean in this regard: 'we do not know what the motivations were and we probably never will, because the [appellant] has never taken the stand...there is a huge difference between regret and remorse and the state will submit [he] has not shown the requisite remorse'. To this I would add it is extremely disturbing that,

on one of the appellant's versions, conveyed at an early stage to Dr Prinsloo (and reflected in his report), the appellant claimed he had decided rather to kill the deceased in order to forget he had raped her way back in 2020. This, as previously mentioned, was when he had not yet placed any reliance on 'voices in his head'. It was also submitted by the state that the appellant's belated reliance on 'voices in his head' was a contrived attempt to evade responsibility and was shown by two professionals to have no merit.

[18] The state also referred the trial court to the decision of the Supreme Court of Appeal (SCA) in *Director of Public Prosecutions, Gauteng Division Pretoria v DMS and Another*

[6] ('DMS'). The facts in that matter were briefly as follows. The respondents, a female aged 21 and a male aged 17 respectively, brutally raped and murdered their 12 year old female cousin. The 21 year old denied having committed the offences and the 17 year old claimed that he committed them in the presence of the 21 year old who had threatened to kill him if he did not do so. The judgment

commences with the following:

'It is often said that sentencing is the most difficult phase of a criminal trial, and rightly so. This case brings into sharp focus the dilemma that is often faced by the trial court when sentencing a minor for violent crimes...'

[19] Both were convicted. In respect of the murder, the trial court had imposed a sentence of 15 years imprisonment on the 21 year old (who by then was 24 years old) and 12 years imprisonment on the 17 year old (who by then was 20 years old). On appeal, the state appellant submitted that the sentences (along with the other sentences which are not relevant for present purposes) were too lenient, induced a sense of shock and therefore ought to be set aside. I acknowledge of course that in the case before us the appellant was 18 years old at the time of the deceased's murder, and thus an adult in the eyes of the law, but he was nonetheless still young, and of an age falling between the two offenders in DMS, which is why it is of valuable guidance. Further, the following facts in that case are eerily similar to the one before us: (1) the deceased had been left in the care of the 21 year old; (2) they were cousins; (3) the murder was brutal; (4) the deceased's body was concealed after the murder in an attempt to avoid detection; (5) the 17 year old had psychological issues (although the evidence was also that there was a high risk of him re-offending which is absent in the present matter); (6) both had difficult childhoods; and (7) both were first offenders.

[20] The SCA considered the various mitigating factors, including the ages of the two offenders at the time of commission of the offences. It found that the aggravating factors far outweighed their personal circumstances, and that in respect of the 21 year old the applicable minimum sentence was proportionate to the seriousness of the offence. It substituted the sentences with life imprisonment for the 21 year old and 23 years imprisonment for the 17 year old.

[21] In the matter before us, the trial court in its sentencing judgment referred to the well-known Zinn triad. It took into account the appellant's personal circumstances and what it referred to as his 'tragic' background of being shunted back and forth between his mother and aunt, his schooling challenges and his issues about his father. Against this, it correctly placed due weight on the expert opinions of Dr Prinsloo and Ms Suliman contained in their reports. It referred to the evidence of sexual assault at the time of the deceased's murder contained in the post-mortem report, and the history of her sexual abuse at the hands of the appellant. It also took into account the sheer brutality of the murder and the trauma and suffering of her parents as result of her death. It found that the evidence established premeditation as well as care to avoid detection while the murder was being carried out and thereafter. It also took into account that the offences are a scourge in South Africa. It referred to *S v Matyityi*[7] where the SCA emphasised that courts are duty-bound to implement the minimum sentences prescribed in the CLA and cautioned that ill-defined concepts such as 'relative youthfulness' that appear to fit a court's personal notion of 'fairness'

ought to be avoided. (To this I would add that in DMS the SCA found in relation to the female perpetrator that 'being above the age of 21 [ie, 21 years and 8 months] at the time of commission of these offences, there was no suggestion [that they were] committed as a result of her immaturity. Her age was therefore a neutral factor'). Taking all of this into account, the trial court concluded that there were no substantial and compelling circumstances present to justify a deviation from the prescribed minimum sentence of life imprisonment.

[22] On appeal before us it was submitted on behalf of the appellant that the trial court: (1) overlooked the element of mercy; (2) over-emphasised the seriousness of the offence 'without proper balance with the offender and the legitimate needs of society'; and (3) in so doing, imposed a sentence that was shockingly disproportionate and inappropriate. It is thus necessary to deal with the test for interference by a court of appeal, and more particularly in relation to sentence.

[23] In DMS[8] the SCA reiterated that '[i]t is well-established that punishment is pre-eminently a matter for the trial court's discretion. Thus, a court of appeal should be careful not to erode that discretion. Interference is only warranted if it is shown that discretion has not been judicially exercised. The test is whether the sentence is vitiated by an irregularity, a material misdirection or is disturbingly inappropriate. This principle was echoed in *S v Van Wyk and Another*[9] where this Court held that a court of appeal would interfere with sentences imposed by a trial court 'only where the degree of disparity between the sentence imposed by the trial court and the sentence the appeal court would have imposed was such that the interference was competent and required'. The crucial question in the enquiry is 'whether there was a proper and reasonable exercise of the sentencing discretion bestowed on the court imposing sentence'.

[24] Also in the context of the so-called minimum sentence legislation, this was recently extensively considered by a Full Court of this Division (Sher J, Le Grange concurring, Dickerson AJ dissenting) in *MT v S*[10] ('MT') with reference inter alia to two earlier decisions in this Division ('GK'

[11] and 'CC'[12]) where, as Sher J summarised, it was held that:

'The assessment of whether there are substantial and compelling circumstances present, or not, in a matter where a prescribed minimum sentence is applicable, involves a value judgment by a sentencing court and not a discretion'.[13]

[25] Sher J found that:

'82. In my view, whilst the sentencing regime which has been imposed by the CLA altered the sentencing discretion i.e the powers of and the process which a trial court must engage in when imposing sentence, at heart that has not materially and fundamentally altered the process which an appellate court must engage in, and its powers, when considering an appeal against a minimum sentence imposed in terms of the CLA, (save in relation to the 'striking disparity' power ...); and when interpreting and giving effect to the CLA care should be taken not to transplant and make applicable to the appeal court, the process that must be engaged in by the sentencing court. If one does not honour the distinction between the different processes which the two levels of adjudication must perform one may inadvertently rupture long-standing, well-established principles that have applied for a century in our criminal law in relation to the powers and functions of sentencing courts vis-à-vis those of appellate courts. It

is the function of the court of first instance i.e. the sentencing court to arrive at, and to impose, an appropriate sentence and the function of an appellate court to supervise and regulate this power by correcting errors made in the exercise thereof, and the roles should be kept separate and distinct from one another.'

[26] I fully agree with the reasoning and approach of Sher J and Le Grange J. Applying that approach to the present matter, I am unpersuaded, in light of what I have set out earlier in this judgment, that the trial court failed to exercise its sentencing discretion judicially. That leaves the question whether the sentence of life imprisonment was so disproportionate that it warrants interference in the sense set out in *Dodo*[14]. The answer to this question is no. This appellant was shown to be an individual who is a danger; the evidential material indicates that he is either deeply disturbed or he is a manipulative liar with no true remorse, and there is simply not enough to persuade me that he has genuine prospects of rehabilitation at this stage. The element of mercy, in the context of proportionality, must necessarily be afforded less weight. In summary, I am of the view that there was no material misdirection by the trial court, and nor is the sentence it imposed shocking, startling or disturbingly inappropriate. There is thus no basis to interfere.

[27] The following order is made:

‘The appeal against the sentence of life imprisonment imposed on count one (murder) is dismissed.’

J I CLOETE

Judge of the High Court

I Agree

R MPHEGO

Acting Judge of the High Court

Appearances

For Appellant Ms P Andrews (Legal Aid SA)

For Respondent Adv T Kwetane

[1] No 105 of 1997

[2] No 75 of 2008

[3] No 51 of 1977

[4] In terms of s 39(2)(a)(i) of the Correctional Services Act 111 of 1998

[5] In terms of s 309(1)(a) of the Criminal Procedure Act

[6] 2023 (2) SACR 113 SCA

[7] 2011 (1) SACR 40 (SCA) at paras 22 to 23

[8] At para 22

[9] Van Wyk v S, Galela v S 2015 (1) SACR 584 (SCA) at paras 31-32

[10] 2025 [ZAWCHC] 307 (25 July 2025)

[11] The majority decision in GK v S 2013 (2) SACR 505 (WCC)

[12] CC v S [2015] ZAWCHC 69

[13] At para 80

[14] S v Dodo [2001] ZACC 16; 2001 (1) SACR 594 (CC)

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