

SOUTH AFRICA / JUDGMENT

S v G.K.R.P (Sentence) (CCD39/2019) [2021] ZAKZDHC 11 (26 March 2021)

[2021] ZAKZDHC 11

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Moodley

CASE / FILE NUMBER

CCD39/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

REPORTABLE

Case no.: CCD39/2019

THE STATE

versus

G[...] K[...] R[...] P[...]

Sentence

delivered 26 March 2021

MOODLEY J

- [1] The accused in this matter G[...] K[...] R[...] P[...] was convicted on 33 charges on 11 December 2020. Sentence proceedings have been delayed because the practice directions issued to regulate the sittings of this court as a result of the impact of the Covid pandemic did not accommodate this matter.
- [2] The State is still represented by Ms S Naidu and the accused continues to be represented by Mr T P Pillay of the Durban Justice

Centre, although he is not participating in the proceedings. Prior to the commencement of sentence proceedings Mr P[...]consulted with the accused, who has been brought to the Court so that he is available to give instructions, should the need arise. Mr P[...]has confirmed that the accused's previous instructions remain in place.

Previous convictions

[3] Mr P[...]also confirmed that the accused had confirmed and signed the SAP 69 which reflected his previous convictions. The State has therefore proved the following previous convictions against the accused :

- i. On 28 April 2005 the accused was convicted of Assault committed on 25 Jan 2005 and sentenced to a fine of R400
 - ii. 7 April 2006 the accused was convicted of Assault and Malicious Damage to property committed on 4 Nov 2004. Both counts were taken as for the purposes of sentence and a sentence of a fine of R400 or 40 days imprisonment was imposed on him and he was declared unfit to possess a firearm.
- [4] The right to a fair trial is not confined to the process of determining guilt or innocence but extends to the sentencing process.

Therefore, in determining sentence, the court should remain dispassionate and carefully weigh the relevant facts and factors in

order to fulfil its responsibility and function to ensure that a convicted offender is treated fairly, and not be swayed by public

sentiment.

[5] In my deliberations on appropriate sentences in this matter, I have remained mindful that although the Accused has been convicted on 33 counts, and refuses to participate in the sentence proceedings except through instructions to his counsel, the accused's

constitutional fair trial rights must not be flouted or ignored, and that further the appropriate punishment for each count individually

and all counts cumulatively must be determined within the applicable constitutional and statutory framework. Therefore even though the accused refuses to address the court directly but has instructed his counsel to make submissions on his behalf, the court must ensure that all relevant facts and factors relating to sentence are placed before it, in order to ensure that this court may exercise its sentencing discretion judicially.

[6] These factors include the personal circumstances of the accused, the context within which the crimes were committed, the relationship

between the accused and the complainant, the accused's attitude, the professional assessment of the complainant and her responses to the accused and the offences perpetrated on her. When life imprisonment is a prescribed minimum sentence, the court must have sufficient information before it to justify that sentence.

[7] The court must also evaluate whether there are any substantial and compelling circumstances which warrant a deviation from the

prescribed sentences for certain of the offences to which the minimum sentence legislation applies. It is not in dispute that the Accused was fully apprised of the relevant minimum prescribed sentences. The 8 counts of rape in contravention of s 3 read with the other relevant sections of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended ('the CL(SORM)AA'), is further read with s51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the CLA), which prescribes a minimum sentence of life imprisonment.

[8] It is trite that while the CLA does not fetter the judicial discretion of a sentencing court which is obliged to weigh all considerations traditionally relevant to sentencing (*S v Dodo* 2001(1) SACR 594(CC) at para 11), the court ought not deviate from the minimum prescribed sentence unless warranted by the finding that there are substantial and compelling circumstances to do so, as held in *S v Malgas* 2001(1)SACR 469(SCA) at para 8 and 25B. But even when prescribed sentences are departed from, the CLA continues to have an impact on sentencing as explained in *S v Abrahams* 2002(1)SACR116 (SCA) at para 25, 'The prescribed sentences the Act contains, play a dual role in the sentencing process... Even where such factors [compelling a different sentence] are present, the sentences the Act prescribes create a legislative standard that weighs upon the exercise of the sentencing court's discretion. This entails sentences for the scheduled crimes that are consistently heavier than before.'

[9] During the sentencing proceedings the defence did not call any witnesses. The State led the evidence of Ms V Naidoo a social worker with the Department of Social Development stationed at Phoenix who was assigned the case of the complainant in this matter in June 2018. She explained that prior to the assignment of the case to her, the maternal family of the complainant had reported to the local Child Welfare service that the accused refused them contact with her. The accused refused to cooperate with the social workers and he thereafter disappeared with the complainant.

[10] Ms Naidoo testified that while at the Home where she had been placed in June 2018, the complainant had felt secure because she was constantly monitored and the premises were safe. She initially suffered intense nightmares about the accused pursuing her; but her anxiety about the accused had lessened and she had become less withdrawn over the period of time, and was able to engage in meaningful relationships. However she is two years behind with her schooling, not because of any intellectual challenge but because she had not completed the year as a result of the disruptive lifestyle she had led. The complainant had been referred to a psychologist and had slowly adjusted to being at school.

- [11] The complainant has since December 2020 been living with one of the families who were willing to foster her. She was placed with the family of her maternal aunt and uncle after several interim contact sessions. The complainant nevertheless experienced difficulty adjusting to the family environment but has received much support from her new family and is more at ease, and is beginning to establish relationships with them. She was initially very concerned about exposure to the Accused again and still suffers nightmares that the accused will take her away. Her emotional well being was extremely compromised but she is slowly regaining control of herself. The complainant's foster placement is being finalised but she will receive continuous monitoring by the social services and any other intervention as required. The teachers at her school have been very supportive. The complainant has been assured that there are people that she can reach out to, but she is also aware that she is responsible for and must take care of herself.
- [12] The Victim Impact Report, as regulated by s70 of the Child Justice Act 75 of 2008, which is intended to reflect the physical, psychological, social, financial or any other consequences of the offence for the victim, was completed by the complainant herself. The report was admitted by consent, and the contents thereof read into the record.

Submissions by Counsel

- [13] Mr P[...] placed the personal circumstances of the accused on record. He was born on [...] 1975 and is 46 years old. He is the eldest of 3 siblings. He matriculated in 1995 and obtained an NQF qualification on Electrical and Mechanical Engineering at the Witwatersrand Technical College in 1996. He was employed by the SADF for 5 years and by ESKOM for 7 years. At the time of his arrest he was employed by SANRAL as a general maintenance manager and received a monthly salary of R35 000. He owns no property.
- [14] The Accused was previously married but is divorced. He has two daughters of 21 years and 17 years who were born of that marriage. He has a third daughter who is 9 years old from another relationship. He has suffered three medical conditions since birth – cardiac, hypertension and diabetes.
- [15] Mr P[...] also pointed out that the Accused's previous convictions were not related to his current convictions and that the Accused had spent more than 2 years in custody pending finalisation of the trial. Mr P[...] also properly conceded that he was constrained by the graphic evidence before the court, the impact of the offences as described by the social worker and the complainant herself, and unable to advance compelling and substantial circumstances to warrant a deviation from the prescribed minimum sentences, but he urged the court to remain mindful that the Accused is a first offender in respect of the rapes and to balance the aggravating and mitigating factors when imposing sentences on the offences to which the CLA did not apply.
- [16] In her address, Ms Naidu emphasised the severity of the impact of the deviant conduct of the accused on the complainant, and that her childhood had been deliberately destroyed by the accused, as demonstrated by the Victim Impact report. She pointed out that had the

complainant not confided in her neighbour the sexual violations and abuse would not have been exposed, and as the evidence showed, there was a likelihood that the accused would have trafficked the complainant more frequently. He had already violated her in one of the worst ways possible with the man they had been to the hotel with, and he had planned further trafficking with C[...] and the unknown minor child who had allegedly had a sexual relationship with her father.

[17] Ms Naidu emphasised that the accused was de facto the parent of the complainant, but instead of protecting her he took advantage of the complainant and abused her body and sexually exploited her in every way possible. She provided horrifying statistics which reveal that at least 42% of the children in South Africa have been ill-treated, whether by being physically abused or sexually exploited, by persons whom they knew and who ought to have protected them. This is a shocking ratio of one in every three children. Ms Naidu therefore submitted that the court should not determine any of the sentences lightly, as the interests of society dictated that the courts should not impose inappropriately light sentences for such serious and increasingly prevalent crimes.

[18] Ms Naidu submitted that the Accused deliberately, by choice and with full intent and knowledge perpetrated the offences on the complainant, but in a cowardly fashion he refused to remain in court while his wrongdoings were exposed under cross-examination. She described him as 'an inveterate liar' who even lied about his personal circumstances as it was common cause that at the time of his arrest he was employed at Mamba Maintenance and not Sanral. She therefore submitted that the sentences should reflect the abhorrence of the accused's moral blameworthiness and that he was undeserving of any mercy, and incapable of rehabilitation. Further the sentences should act as a deterrence which would assist in the combat against sexual offenders and therefore serve the interests of society.

Legal principles

[19] In *S v PB 2013 (2) SACR 533 (SCA)* at para 19 Bosiello JA stated:

'...it remains an established principle of our criminal law that sentencing discretion lies pre-eminently with the sentencing court and must be exercised judiciously and in line with established and valid principles governing sentencing . . . '

These established and valid principles as set out in *S v Zinn 1969*

(2) SA 537 (A) at 540G-H are that the punishment should fit the offender and the offence, the interests of society must be considered and there should be a measure of mercy. The court must also consider the main purposes of punishment which are deterrence, reformation or rehabilitation and retribution.

I also acknowledge that I been guided in my deliberations by *A Guide to Sentencing in South Africa* 3rd edition 2016 by SS Terblanche.

The offences

[20] Terblanche states that first and foremost, the sentence should reflect the severity of the crime. The modern approach to determining

the seriousness of a crime is that consists of the following two considerations: (1) the degree of harmfulness of the offence, and (2) the degree of culpability of the offender

[21] The facts of the offences for which the accused must now be sentenced have been set out in detail in the judgment. It is nevertheless

appropriate to highlight the following pertinent facts: Even before the sexual assaults on the complainant commenced, the accused removed and isolated the complainant from her mother's family. Then he moved with the complainant from house to house in different provinces and areas within Kwa-Zulu Natal. Therefore he prevented her from putting down roots or having a stable home environment or making friends and developing relationships or a sense of security, all of which were essential to her development during her childhood years.

[22] The accused also deprived the complainant of her constitutional right to education in order to enhance her isolation and to avoid his abuse and violation of the complainant being exposed. While they lived in Ottawa, when the accused suspected that someone was spying on them, he did not desist from sexually violating the complainant. Instead he took the complainant to the beach and raped her there, despite her fear of being in the dark on the beach.

[23] It is not that the accused lacks insight or was not aware of the consequences of his actions. The culpability of the accused is aggravated by his cunning and deliberate subjugation of the complainant to his narcissism and immoral practices. In court we

observed that the accused was tall and physically imposing and in his confrontation with the security personnel, he towered over them. The complainant is very much smaller and slight in build, and an immature child who was totally dependant on him for shelter, care and support. She testified that there were times when she was tired by the accused's persistent sexual demands on her, but that he would not desist, and become angry if she said she was tired. She told the court that she was afraid of the accused's anger and afraid that he would carry out his threat to 'put her where her mother was', by which she understood he would kill her.

[24] The accused ravaged the complainant not only physically but he wrought untold damage on her mind and psyche. This is evident in her recurring nightmares that the accused would return to take her away, and her inability and reluctance to establish relationships which will sustain her and provide her with the affection and stability she clearly craves. In perpetrating the physical violations on the complainant the accused capitalised on her helplessness because she was bereft of family or adult support, and effectively blackmailed her into cooperating with his depravity by telling her that her mother was willing to perform such sexual acts with and on him.

[25] The complainant expressed her own discomfort at having to perform the sexual acts the accused instructed her to do. I am certain that there was an inherent revulsion to these acts in the complainant, but she was too immature and helpless to rebel against it. This innate revulsion was apparent in her evidence that she felt compelled to cooperate because the accused told her that her mother had done so. Yet she described the other adult female who performed sexual acts with the accused ie C[...], as 'creepy' and was forthright in her dislike of the woman. Her revulsion was even more apparent in her refusal to have sexual intercourse with an unknown man in the hotel room which the accused facilitated, although she performed other acts as she was instructed. I agree entirely with Ms Naidu's submission that this prostitution of the complainant, and the simultaneous rape by the accused was a complete betrayal and violation of her physical, mental and emotional integrity.

[26] The seriousness of the offence of rape and similar sexual violations and trafficking cannot be overemphasized. There is a substantial body of authority that supports this evaluation, including the remarks by Mohamed CJ in *S v Chapman* [1997] ZASCA 45; 1997 (3) SA 341 (SCA) :

'Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.

The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilization.

Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives.'

How much more humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim when the victim is a young helpless child of 9 years.

[27] The facts also leave no doubt that the accused intended trafficking the complainant and was grooming her, even enlisting one of his girlfriends to assist. It is apparent that he recorded his sexual acts to feed his own narcissism, but the accused had a darker and more depraved intent. He posted some of the photographs and videos on the internet to attract paedophiles. The complainant testified several times that the accused was going to make money by making her perform sexual acts on other men. Under s 56A (2) of the CL(SORM)AA, 'If a person is convicted of any offence under this Act, the court that imposes the sentence shall consider as an aggravating factor the fact that the person (a) committed the offence with the intent to gain financially, or receive any favour, benefit, reward, compensation or any other advantage...'

[28] The Accused was also on the lookout for other vulnerable children by prowling the internet, and did in fact make contact with a young girl whom he expressed the desire to have sexual intercourse with while he offered the complainant to the child's father. Trafficking is a serious crime, which extends the problem of rape and sexual violation out of the home and into the wider community and exposes the victims to violence, drug abuse and even death. The accused had also introduced the complainant to cannabis. Hence the proven facts in the counts of trafficking are highly significant to the assessment of the seriousness of the relevant offences, and the sentence warranted.

The offender

[29] Mr P[...] placed on record the personal circumstances of the accused as aforesaid. I have little doubt that the accused is not intellectually challenged and is capable of being in gainful employment. Mr J[...] P[...] testified that the accused had a good relationship with his colleagues. He therefore has good interpersonal social skills. This is also illustrated in the number of relationships the accused has had with various women, some of whom shared his exhibitionism and enjoyment of watching themselves on camera. One question that comes to mind immediately is why the accused had to violate the complainant when he did not lack female

company and sexual relationships with adult women. In fact he has three children of his own – all young girls. Yet he had no compunction in violating a young child whom he claimed he considered his own.

[30] The accused's deception and anger at being exposed was evident when he pretended to shed tears in court while alleging that he had abandoned his own last born child, in order to take care of the complainant and then spit vitriol about being betrayed by the complainant. Yet the betrayal was by him, as he displayed no paternal instinct to protect or nurture the complainant. In terms of s 32 of the Children's Act 38 of 2005 (the Children's Act), as he voluntarily assumed parental responsibility for the complainant, the accused was 'obliged to (a) safeguard the child's health, wellbeing and development; and (b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards.' He clearly failed to comply with these obligations. Instead, his arrogance clearly overwhelmed his perception of the seriousness of his abuse and immoral treatment of the complainant. He also cared not about the impact of his conduct on his own children.

[31] Ms Naidu's description of the accused as an inveterate liar is warranted. He showed little respect for the court or the truth. He passionately disputed the allegations against him, and attempted to convince the court that he had cared deeply for the complainant. When confronted with the allegations that he had taken the complainant to the beach late at night, he responded vehemently that he had never taken her to the beach at night. He had taken her to the beach during the day, and while she played in the rockpools, he went to the Spar and bought food from the delicatessen. He also stated that it was winter when these

incidents allegedly occurred and he would certainly not take her out in the cold nor he would go out in the cold himself. He alleged that the only way in which he touched the complainant was 'the way in which a father would express his love for his child'.

[32] However, the truth about the night visits to the beach, as related by the complainant, was corroborated by Mr J[...] P[...] who even described the clothes worn by the complainant because he heard the accused leave and observed him return with the complainant in the early hours of early June 2018. Further as the accused's defence unravelled under cross-examination, mainly through his own admissions, he displayed his arrogance and aggression, which bordered on deteriorating into violence, when he stormed out of the witness box and confronted the security personnel while swearing in vulgar and abusive language. This after testifying that he 'never ever swore or used vulgar language'.

[33] The accused has certain illnesses but has received treatment therefor and has survived well in custody for two years. There is no reason to believe that he will not continue to receive the same medical care when a custodial sentence is imposed.

[34] Mr P[...] properly conceded that he was unable to advance any substantial or compelling circumstances in respect of the convictions

which have prescribed minimum sentences. The only mitigating factor is that the Accused is a first offender in respect of the current

convictions. But balanced against that factor is the fact that he committed certain of the offences, specifically the rapes, multiple

times. As Terblanche states, a first offender is treated with mitigation because the offender might prove to not likely to repeat

the crime. However, the nature of the crime and the callousness and brutality of the offender's actions may show that he has no regard or respect for other people. In such a case, the interests of society become more important than the interests of the individual. For these reasons, it is sometimes appropriate that first offenders are not entitled to non-custodial measures.

The interests of society

[35] As the third point of the Zinn Triad, a sentence must serve the interests of the community. In determining what is in the interests

of the community, the court must consider the effect of the offences of which the accused has been convicted on the community. The interests of the public must be considered when the element of retribution is considered, as the administration of justice and the confidence of the public in the courts must not be undermined by the imposition of inappropriately light sentences for serious and prevalent crimes. It is distressing that a court can take judicial notice that the rape and trafficking of young children and other acts of sexual and physical violence are rife in our society. The President of this country mentions Gender Based Violence and the need to address the protection of vulnerable children and women in practically every public address.

This is a reprehensible social issue that affects all citizens irrespective of financial or social status or creed.

[36] In Chapman, Mahomed CJ stated with assurance that " The Courts are under a duty to send a clear message to the accused, to other potential rapists and to the community: We are determined to protect the equality, dignity and freedom of all women, and we shall

show no mercy to those who seek to invade those rights."

However the startling and horrific statistics quoted by Ms Naidu indicate despite that assurance given over 24 years ago, appropriately severe sentences are required now more than ever before to punish offenders against children and to act as a general deterrent to like minded persons, upon whom it must be impressed that the court will not hesitate to impose severe sentences for serious crimes like child abuse, rape and trafficking which have reached endemic proportions nationally and globally.

[37] Nevertheless, I remain mindful that the deterrence intended by the sentence must also be individualised in relation to the accused and that the accused ought not to be sacrificed on the altar of deterrence by a sentence where the individual is treated harshly and unfairly in the hope, not knowledge, that such treatment would prevent other potential crimes and promote law-abiding conduct in the community at large. In S v Furlong 2012 (2) SACR 620 (SCA) para 14 the court warned that:

'... a court must not allow the retribution demanded by the community and the deterrence of the accused and other like-minded persons intended by the sentence, to detract from its responsibility to consider the prospects of rehabilitation of the accused.'

[38] But what are the prospects of rehabilitation of the accused? He is relatively young – 46 years old. Some expression of remorse may indicate a receptiveness to rehabilitation. But the accused has displayed no remorse whatsoever – even when exposed by his own admissions eg identifying sex toys under cross-examination which he denied any knowledge of in his evidence in chief. Instead, he berated the complainant for exposing him, and became incensed and aggressive towards the prosecutor and the Court.

[39] It is also an accepted sentencing principle that when serious offences are committed, and the circumstances under which such

offences are committed warrant it, rehabilitation must be subjugated to deterrence and retribution. This is clearly such a case. I am satisfied that the interests of the society demand that an offender of the accused's ilk and proclivities must be removed from society for as long as is lawfully appropriate, because of the cruelty of the Accused's deliberate and constant sexual assaults on the complainant over a period of more than a year, and his expressed intention to traffick the complainant further and to violate another child.

[40] Not only am I fortified in my determination by the provisions of the CLA which demands standardised and consistently severe sentences for the relevant crimes, but also by the provision in the Children's Act[1] for a National Child Protection Register for the recordal of the names of persons convicted of sexual offences against children to prevent such persons from working with children. There is little that inclines me to mercy towards the accused.

The Offences and Sentence

[41] In my judgment I have indicated that some convictions should be taken together for the purposes of sentence. I am also cognisant that an order that sentences run concurrently is called for where the evidence shows that the relevant offences are 'inextricably linked in terms of the locality, time, protagonists and, importantly, the fact that they were committed with one common intent'. (See *S v Mokela* 2012 (1) SACR 431 (SCA) para 11)

[42] Counts 7 8 9, 28 29 30 42 and 43 : Rape

In *S v Matyityi* 2011 (1) SACR 40 SCA, Ponnen JA stated at Paragraph

[23] at 53c–g that '...Courts were not free to subvert the will of the legislature by resort to vague, ill- defined concepts or other equally vague and ill-founded hypotheses that appeared to fit the particular sentencing officer's notions of fairness. Predictable outcomes, not outcomes based on individual whim, were foundational to the rule of law that lay at the heart of the constitutional order.' In the absence of any substantial and compelling circumstances, and because the minor child below the age of 16 years was raped multiple times by the accused, I am constrained to impose the minimum sentence prescribed by S51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 of life imprisonment on each of the 8 counts.

Sentence : Counts 7 8 9, 28 29 30 42 and 43 – Life imprisonment on each count

[43] Counts 12 and 48 : Sexual Grooming of Children

The sentence must be imposed in terms of s 276 of the Criminal Procedure Act 51 of 1977 (the CPA) and Section 120 of the Children's Act. The conviction related to the accused frequently exhibiting films or recordings depicting sexual conduct between adults to the minor complainant on a cellular phone, with the intention to encourage, enable, instruct or persuade her to perform such similar sexual acts in order to procure money.

Sentence : Count 12 and 48 - 7 years on each count.

[44] Counts 13 and 36 (main count) Using a child for pornography

These convictions which relate to the accused unlawfully and intentionally recording the complainant on his cellphone, thereby creating child pornography depicting the complainant, are read with Section 51(2) and Part 111 of Schedule 2 of the CLA. The prescribed minimum sentence for a first offender is 10 years imprisonment. Given the aggravating factors that the recordings were made on a regular basis and the intention of the Accused to benefit from the

pornography by publishing it on the internet, I am of the view that a sentence in excess of the prescribed minimum sentence is warranted.

Sentence : Counts 13 and 36 - 12 years imprisonment on each count.

[45] Counts 14 and 37 Possession of Child Pornography: (taken as one for the purposes of sentence)

These convictions relate to accused's unlawful and intentional possession of child pornography of the complainant and an unknown

female child. As these convictions are related to the foregoing convictions, I am of the view that a lesser sentence is warranted and the sentences should be ordered to run concurrently with the sentences imposed on counts 13 and 36.

Sentence: Counts 14 and 37 (taken as one for the purposes of sentence)- 5 years imprisonment ordered to run concurrently with the sentences imposed on Counts 13 and 36.

[46] Counts 15 and 38 : Distribution of Child Pornography:

These counts relate to the distribution of depictions or scenes of child pornography of the complainant by the Accused. Aggravating factors are his intention to benefit from such distribution financially or otherwise and the exposure of the complainant to sexual exploitation.

Sentence: Counts 15 and 38 (taken as one for the purposes of sentence)- 10 years imprisonment.

[47] Counts 16 17 18 31 32 and 33 Compelled Self-sexual Assault:

These charges in contravention of the provisions of the CL(SORM)AA are read with relevant provisions of the CPA and S 120 of the Children's Act, and relate to the accused compelling the complainant:

Count 16 and 31: to engage in self masturbation and/or a sexuality suggestive acts

Count 17 and 32 : to wear and pose revealing adult lingerie while he photographed and/or recorded her.

Count 18 and 33 : to use sex toys.

I hold the physical degradation and emotional trauma caused to the vulnerable and young complainant by these acts to be aggravating factors.

Sentence :

Count 16 and 31 (taken as one for the purposes of sentence) – 10 years imprisonment

Count 17 and 32(taken as one for the purposes of sentence)- 10 years imprisonment

Count 18 and 33 (taken as one for the purposes of sentence) - 10 years imprisonment

[48] Counts 19 40 and 41: Trafficking

These convictions are premised on the court finding that the Accused contravened provisions of the Prevention and Combating of Trafficking In Persons Act 7 of 2013; read with the relevant provisions of the CL(SORM)AA; further read with the relevant provisions of the Children's Act and the CPA and S51(1) and Part 1 of Schedule 2 of the CLA The prescribed minimum sentence for trafficking under the CLA is life imprisonment.

The conviction on Count 19 relates to the accused trafficking the complainant by restricting her to the confines of their residences by means of threats or use of harm and/or other forms of coercion for the purposes of sexual exploitation for his own gratification and in preparation for the complainant to be made available to other unknown persons for the purpose of sexual exploitation in order to procure payment from them for the benefit of the accused and/or C[...].

The conviction on Count 40 relates to the accused similarly trafficking the complainant at 24 Neptune Drive on diverse occasions during the period March 2018 – 11 June 2018.

The conviction on Count 41 relates to the accused trafficking the complainant by making her available to an unknown man at an unknown

address in the Durban area where he demanded that the complainant perform sexual acts with the said unknown male and himself simultaneously for the purpose of sexual exploitation in order to procure payment from the said unknown male for the benefit of the accused.

Having considered the facts pertaining to each of the charges and despite the aggravating factor that the trafficking extended over a period of almost 1 year, I am of the view that the minimum prescribed sentence is too harsh in respect of counts 19 and 40 as the accused has already been sentenced to life imprisonment for the rapes that he perpetrated during this period and sentenced to various periods of imprisonment for the other unlawful acts he committed during this period. However the same reservation does not apply to Count 41 and I am satisfied that the minimum prescribed sentence is warranted.

Counts 19 and 40 - 20 years imprisonment on each count Count 41 – Life imprisonment

[49] Count 20: Conspiracy to Commit a Sexual Offence

This conviction relates the accused conspiring with C[...] to sexually exploit the complainant by sexually grooming her in preparation for making her available to unknown men for the purposes of engaging in sexual acts for profit.

Sentence : Count 20 – 5 years imprisonment

[50] Counts 24 and 34: Compelling or Causing Children to Witness Self-

Masturbation

These convictions relate to the accused compelling the complainant to be in the presence of or watch him and/or C[...] while they engaged in an acts of self- masturbation, and to photograph the accused while he engaged in an acts of self- masturbation.

Sentence: Counts 24 and 34 (taken as one for the purposes of sentence)- 7 years imprisonment

[51] Count 27 and 46 : Child Abuse

The conviction on Count 27 relates to the accused confining the complainant mainly to their homes in the Durban area and ill-treating

her by failing to enrol her at a school and/or preventing her from attending school and confining her in the home and demanding that she clean the house.

The conviction in Count 46 relates to the accused not only by confining her mainly to their home and failing to enrol her at school while living in Ottawa, but also making her cook and facilitating the complainant smoking cannabis.

As these convictions are based on a contravention of ss 305(3)(a) of the Children's Act, the penalties in ss 305(6) and 305(7), are applicable to the sentence to be imposed:

S305

(6) provides that a person convicted of an offence in terms of subsection (3) is liable to a fine or to imprisonment for a period

not exceeding ten years, or to both a fine and such imprisonment.

S305(7) provides that a person convicted of an offence in terms of subsection

(3) more than once is liable to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

A relevant aggravating factor in these counts is that the complainant has fallen behind 2 years in her school education, and is struggling to establish social relationships. Another aggravating factor is her exposure to cannabis. A fine does not seem an appropriate option.

Count 27 and 46 (taken as one for the purposes of sentence under s 305(7) of the Children's Act 38 of 2005) – 15 years imprisonment .

[52] Count 39 Compelling or causing Children to witness Sexual Acts

This conviction relates to the accused using sex toys in the presence of the complainant for his sexual gratification. S56A (2) of the CL(SORM)AA provides that if a person is convicted of any offence under this Act, the court that imposes the sentence shall consider as an aggravating factor the fact that the person•

(a) committed the offence with the intent to gain financially, or receive any favour, benefit, reward, compensation or any other advantage; or

(b) gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of such offence.

Sentence: Count 39 - 5 years imprisonment

[53] Count 47 Incitement or Inducing Another Person to Commit a Sexual Offence

This conviction is related to the accused's communications in WhatsApp messages through which he induced or incited an unknown

adult female to commit a sexual act with the complainant.

Sentence: Count 47

- 5 years imprisonment

[54] Count 54 Sexual Exploitation of Children (Being Involved in the Sexual Exploitation of a Child)

This conviction involves the contravention of the relevant provisions of the CL(SORM)AA, read with the relevant provisions of the CPA and further read with s51(2)(B) read with part 3 of Schedule 2 of the CLA, which provides that a first offender shall be sentenced to a term of imprisonment of not less than 10 years.

This conviction relates to the accused's WhatsApp conversation with a young unknown female child, during which he incited the said child to send him pornographic images of herself and to commit sexual acts with him whilst the complainant would perform sexual acts with the child's father. In order to facilitate this interaction amongst the four of them, the accused sent pornographic images of himself and the complainant to the said child. In the absence of any substantial and compelling circumstances, I am satisfied that the prescribed minimum sentence is appropriate.

Sentence: 10 years imprisonment

[55] Entry in the National Child Protection Register

(i) In terms of S120 of the Children's Act 38 of 2005, the accused is declared to be a person unsuitable to work with children, and it is directed that his particulars be entered in Part B of the National Child Protection Register.

(ii) In terms of S122 of Children's Act 38 of 2005, the Registrar of this Court is directed to notify the Director-General of the Department of Social Development in writing of the finding of this court in terms of section 120 that the Accused, G[...] K[...] R[...] P[...], has been declared a person unsuitable to work with children.

Summary of sentences imposed:

1 Count 7 - Life imprisonment

2 Count 8 -Life imprisonment

3 Count 9- Life imprisonment

4 Count 12 - 7 years imprisonment

5 Counts 13 - 12 years imprisonment

6 Counts 14 and 37 (taken as one for the purposes of sentence)- 5 years imprisonment; the sentence is ordered to run concurrently with the sentences imposed on Counts 13 and 36.

7 Counts 15 and 38 (taken as one for the purposes of sentence)-10 years imprisonment.

8 Count 16 and 31 (taken as one for the purposes of sentence) – 10 years imprisonment

9 Count 17 and 32(taken as one for the purposes of sentence)- 10 years

10 imprisonment

11 Count 18 and 33 (taken as one for the purposes of sentence) - 10 years

12 imprisonment

13 Counts 19 - 20 years imprisonment

14 Count 20 – 5 years imprisonment

15 Counts 24 and 34 (taken as one for the purposes of sentence)- 7 years imprisonment

16 Count 27 and 46 (taken as one for the purposes of sentence under s 305(7) of the Children's Act 38 of 2005) – 15 years imprisonment

17 Count 28 - Life imprisonment

18 Count 29 - Life imprisonment

19 Count 30 - Life imprisonment

20 Count 36 - 12 years imprisonment

21 Count 39 : 5 years imprisonment

22 Count 40 – 20 years imprisonment

23 Count 41 – Life imprisonment

24 Count 42 – Life imprisonment

25 Count 43 – Life imprisonment

26 Count 47: 5 years imprisonment

27 Count 48 - 7 years imprisonment

28 Count 54 : 10 years imprisonment

By operation of law the sentences imposed on all other counts will run concurrently with the sentence of Life imprisonment imposed on Count 7.

Entry in the National Child Protection Register

(i) In terms of S120 of the Children's Act 38 of 2005, the accused is declared to be a person unsuitable to work with children, and it is directed that his particulars be entered in Part B of the National Child Protection Register.

(ii) In terms of S122 of Children's Act 38 of 2005, the Registrar of this Court is directed to notify the Director General of the Department of Social Development in writing of the finding of this court in terms of section 120 that the Accused, G[...] K[...] R[...] P[...], has been declared a person unsuitable to work with children.

Date of judgment: 11 December 2020

Date of Sentence Proceedings: 24 March 2021

Date of Sentence: 26 March 2021 Appearances

For the State Ms S NAIDU

Office of the Director of Public Prosecutions, Durban

Cell: 083 301 4004

Email: snayager@npa.gov.za

For the Defence Mr TP Pillay

Legal Aid South Africa Durban Office

Phone : 031 304 0100

Email: ThiagrajP@legal-aid.co.za

[1] Part 2 National Child Protection Register (ss 111--128A)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAKZDHC/2021/11.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-gkrp-unknown-topic-akzdhc-2021>

Prepared on 9 October 2026 · Esheria