

SOUTH AFRICA / JUDGMENT

S v Klaas (CC51/2020) [2020] ZAECHGC 138 (30 November 2020)

[2020] ZAECHGC 138

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Beshe

CASE / FILE NUMBER

CC51/2020

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

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

Case No: CC51/2020

Delivered: 30 November 2020

In the matter between:

THE STATE

And

WANDILE KLAAS

SENTENCE

BESHE J:

[1] The accused has been found guilty of:

1. Housebreaking with intent to commit theft;
2. Rape; and
3. Theft.

He was convicted based on his pleas of guilty to all three counts. He also submitted a detailed statement in terms of Section 112 of Criminal Procedure Act.[1] The statement was supported by: DNA results that linked him to the rape, complainant's medical report and photo album depicting

complainant's home. Therein he explained that he broke into complainant's house with the intention of stealing items he may find inside complainant's house, at 03h30 in the morning. At the time he was armed with a self-made sword. Upon seeing the complainant inside the house he formulated an intention to rape her which he did twice. First with a condom and the second time without any protection, ejaculating on both instances. He thereafter searched complainant's clothes for valuable items and found a sum of R 50.00 inside her wallet as well as her ABSA bank card. He also took her cellular phone.

[2] The incident took place on the 10 March 2013. It would seem that the accused managed to escape detection until, fortuitously, during the investigation of another matter in respect of which he had been arrested, it was noted that his DNA matched the DNA that was picked up in respect of the present case. At the time of the incident, the complainant was a sixty two (62) years old. Both the complainant and the accused hail from Sweetwaters, in King William's Town where the incident took place.

[3] I am now faced with the matter of sentencing the accused. He falls to be dealt with in terms of Section 51 (1) of the Criminal Law Amendment Act.[2] Meaning that, he is liable to a discretionary minimum sentence of life imprisonment. This is so because he raped the complainant more than once. It is trite that a lesser sentence can only be imposed if substantial and compelling circumstances exist, which justify the imposition of a lesser sentence.

[4] Mr Geldenhuys who is representing the accused submitted that there were substantial and compelling circumstances that justify the court's departure from imposing the prescribed sentence. The following are accused's personal circumstances that were placed before me by his counsel:

He is thirty two (32) years old. He was twenty four (24) years old when the incident took place in 2013. He is not married. He is a father to a three (3) year old daughter who lives with his mother. His father passed away when he was four (4) years old. His highest standard of education is Grade

8. He worked as a tiler, earning R 800.00 per forth night.

[5] The accused is not a first offender. In 2007 he was convicted of malicious damage to property. The year 2012 seems to have been a busy year for him. He was convicted twice for housebreaking with intent to steal and theft and once for assault with intent to do grievous bodily harm. In 2014, he was once again convicted of housebreaking with intent to steal and theft. We know that during 2013 he committed the offences under consideration.

[6] His personal circumstances together with the following factors, so it was contended on his behalf, amount to substantial and compelling circumstances:

The fact that he pleaded guilty to the charges. By so doing, taking responsibility for his actions and that this bodes well for prospect of his rehabilitation. None of his previous convictions are for a sexual offence. He was under the influence of alcohol when he committed the offences. In his plea explanation, accused stated that he had earlier that day consumed some wine. So, it was

argued that this must have lessened his inhibitions. Even though he has been convicted of a serious offence- rape – the one under consideration cannot be said to be falling under the worst category of rapes. No gratuitous violence was used. The rape was not planned. Mr Geldenhuys submitted that that in these circumstances, the imposition of the minimum prescribed sentence will result in an injustice.

- [7] This was contended by Ms Hendricks who is acting on behalf of the Director of Public Prosecutions who submitted that there were no substantial and compelling circumstances, even if his personal circumstances were to be considered as mitigating factors. She enumerated those to be inter alia that: The offence was committed in respect of an older person - that is an aggravating circumstance in terms of Section 30 (4) of the Older Persons Act 13 of 2006. I may add in this regard that attacks on older vulnerable people who usually stay alone are prevalent. They are considered as soft targets which in fact they are. It is unlikely in this case that accused did not know who stayed in complainant's house in light of the fact that he also stays in Sweetwaters like the complainant. Ms Hendricks highlighted the fact that accused invaded complainant's house, a place where she should have felt safe, at a time when she was most vulnerable being the early hours of the morning – 03h30. It appears unlikely that there would have been no premeditation. The emotional, physical and psychological impact of the attack on the complainant is plain for all to see from her statement about the impact the incident had on her. Even though accused stated that he had some wine earlier, it's not clear how, if at all the alcohol had influenced his actions. The fact that the accused was armed with a self-made sword.
- [8] It is my considered view that in the circumstances, to wit complainant's age, the fact that it was at 03h30 in the morning, she was probably not fully clad, in the face of home-made sword, there would have been very little attempt or even thought of attempting to offer resistance to what accused was doing. So, the fact that there was no gratuitous violence used is neither here nor there. Ms Hendricks also highlighted the fact that even though accused has never been convicted of a sexual offence, one of his previous convictions is that of assault with intent to do grievous bodily harm, an offence that involves violence to another. It is so that rape also is an offence that involves an element of violence. It is in itself brutal. A brutal invasion of the dignity and privacy of another, an infringement of the right to bodily integrity.[3] It is noteworthy that even at that young age, at around twenty four
- (24) years, accused already had five previous convictions, three being in respect of housebreaking with intent to steal and theft. Displaying disregard from the rights of others. Ms Hendricks pointed out that the sentences he received in respect of these offences seem not to have been effective in deterring the accused

from committing offences, instead he had moved a notch up to commit even more serious offence/s.

- [9] It is so that accused pleaded guilty to the offences, seven years after they were committed. Can this be regarded as a sign of remorse? Ms Hendricks submitted that accused only pleaded guilty because he was linked to the offence by DNA evidence. So, there was overwhelming evidence against him. In light of the fact he did not testify, the court does not know whether he is in fact remorseful, whether he is taking responsibility for his action which will bode well for his prospects of rehabilitation.
- [10] Very illuminating remarks were made in a case where accused's plea of guilty was said to be a sign of remorse, in *S v Matyityi* 2011 (1) SACR 40 at 46 – 47 where the following was said:

“[13] Remorse was said to be manifested in him pleading guilty and apologising, through his counsel (who did so on his behalf from the bar) to both Ms KD and Mr Cannon. It has been held, quite correctly, that a plea of guilty in the face of an open and shut case against an accused person is a neutral factor. The evidence linking the respondent to the crimes was overwhelming. In addition to the stolen items found at the home of his girlfriend, there was DNA evidence linking him to the crime scene, pointings-out made by him and his positive identification at an identification parade. 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.”

These remarks are very apposite in this matter and apply with equal force. If I were to find that substantial and compelling circumstances exist in this matter, I would be doing what courts have been warned against doing, namely deviating from imposing the prescribed sentence for flimsy reasons. (*S v Malgas* 2001 (1) SACR 463 SCA). Similarly in *S v Nkomo* 2007 (2) SACR 198 at 207 [28] the following was said:

“[28] Against the backdrop of the unprecedented spate of rapes in this country, courts must also be mindful of their duty to send out a clear message to potential rapists and to the community that they are determined to protect the equality, dignity and freedom of all women. Society's legitimate expectation is “that an offender will not escape life imprisonment – which has been prescribed for a very specific reason—simply because [substantial and compelling] circumstances are, unwarrantedly, held to be present. In our constitutional order women are entitled to expect and insist upon full protection of the law.”

Can it be said that in the circumstances of this case an injustice will be done if the minimum sentence if imposed – will the sentence be disproportionate to the crime, offender and the interest of society. I think not.

[9] Accordingly, the accused is sentenced as follows:

Count 1: The accused is sentenced to undergo three (3) years imprisonment.

Count 2: The accused is sentenced to undergo imprisonment for life.

Count 3: The accused is sentenced to undergo twelve (12) months imprisonment.

NG BESHE

JUDGE OF THE HIGH COURT

For the State : Adv: Hendricks

For the Defence : Adv: Geldenhuys

[1] Act 51 of 1977.

[2] Act 105 of 1977.

[3] Rights protected under Section 10 and 14 of the Constitution.

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/ZAECGHC/2020/138.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-klaas-unknown-topic-aecghc-2020--6a3ea5103b1caa9129808439>

Prepared on 14 October 2026 · Esheria