

SOUTH AFRICA / JUDGMENT

S v Minnaar (Sentence) (CC 68/2020)

[2025] ZAWCHC 62 (18 February 2025)

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COURT

Western Cape High Court, Cape Town

BEFORE

Nziweni

CASE / FILE NUMBER

CC68/2020

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: CC68/2020

In the matter between

THE STATE

and

MARVIN MINNAAR

Accused

JUDGMENT ON SENTENCE DELIVERED 18 FEBRUARY 2025

NZIWENI, J:

Introduction and

background

- [1] The events that were chronicled in this case were tragic and very challenging to hear about. On 03 October 2023, after the trial, Mr Minnaar was convicted on charges of kidnapping, rape and murder. In respect of the rape and the murder convictions, the state invoked the provisions of S 51(1) of the Criminal Amendment Act, Act 105 of 1997 (“CLAA”). Consequently, the mandatory life imprisonment is applicable to both the convictions of rape and murder, unless this Court finds that there are substantial and compelling

circumstances, justifying departure from the prescribed sentence.

- [2] After the convictions, this Court ordered a pre-sentence investigation in terms of s 286A of the Criminal Procedure Act 51 of 1977 (“the CPA”) into whether the accused can be declared a dangerous criminal.
- [3] Since the date of convictions, this matter has taken quite a while to reach this stage of sentencing. The protracted delay in the sentencing proceedings is the result of obtaining a report as contemplated in s 286A of the CPA and is not due to any fault of the parties or this Court.
- [4] I need to pause here to note the following; an accused person in terms of s 286A has a statutory right to have a psychiatrist of his own choosing appointed if he or she so elects. Mr Minnaar made an election to have a private psychiatrist of his own choice. Unfortunately, the appointment of the psychiatrist for purposes of s 286A (3) (a) (ii) proved to be a very burdensome and challenging exercise. Particularly, for the superintendent of Valkenberg hospital and the Chief Registrar of this Division. From the outset, it became evident that the process entailed a great deal of red tape.
- [5] After lengthy back-and-forth communication between the Chief Registrar of this Division and the Valkenberg Superintendent, it became evident that the State was not in a position to speedily secure the services of a private psychiatrist, amongst others, due to bureaucracy labyrinth. The accused finally abandoned the request for a private psychiatrist.
- [6] I was made to understand that efforts were thwarted, inter alia, because the Department of Justice (the DoJ) is supposed to compile a national list of psychiatrists in private practice that can be utilised, for purposes of s 286A. Apparently, the existing private psychiatrists list for the Western Cape is very old and outdated. And some of the psychiatrists on the old list are no longer available. Another reason I was informed of was lack of assurance of the psychiatrist fee. As such, no private psychiatrists are willing to take the brief, presumably because the rate offered by the Department of Justice is not worth leaving their practice for.
- [7] Clearly, s 286A guarantees an accused person, particularly an indigent accused person, an entitlement to the services of private psychiatrists at State expense. It is quite disheartening that what is provided for by s 286A (3) (a) (ii) has proven to be difficult to access. Surely, the right of an accused conferred by a statute cannot be denied because of financial limits or bureaucratic roadblocks. So far as sentence proceedings are concerned, s 286A can be a vital provision of the CPA. Moreso, in light of the fact that our country is plagued by violent crimes.
- [8] To accomplish the worthy and obvious objective of the Act in determining whether an accused person can be declared as a dangerous criminal; it is vital that the red tape should be dealt with. Surely, the Legislature was certainly aware of the cost implication that may be occasioned or triggered by application of s 286A (3) (a) (ii). Such vital provision of the criminal procedure cannot be hamstrung by red tape and financial constraints.

- [9] It is thus highly critical that the red tape around the implementation of this is looked into with the aim of reducing it for the smooth running of the courts and the reduction of delays.
- [10] After the accused had abandoned his request for an independent psychiatrist, all the pre-sentence reports were obtained. For purposes of these proceedings, this court was provided with a probation officer's report, a clinical psychologist report, a report in terms of s 286A, and five victim impact statements. The defence requested that the clinical psychologist should be called so that she could be interrogated about her report, specifically certain statements which defense counsel asserted were based on a misunderstanding, or were denied by the accused.
- [11] Pursuant to the convictions, this Court shall now embark on a task of imposing sentence upon the accused. Undoubtedly, sentencing involves a monumental and a very complex process, for any presiding officer.
- [12] There is a plethora of authoritative decisions in our jurisprudence which contain useful guiding principles and proper approach to follow in order to arrive at a fitting sentence. The parties also referred this Court to such authorities.
- [13] It is settled that in the consideration of an appropriate sentence, the Court also needs to give regard to the well-known triad of factors and the four key aims of punishment, which are the following:
1. Retribution;
 2. Rehabilitation;
 3. Prevention; and
 4. Deterrence.
- [14] This court is also mindful that, whatever sentence it imposes must be blended with a measure of mercy and compassion. Depending of course on the circumstances. I had the benefit of considering the pre-sentence reports that had been produced in relation to the case. The professional reports included a report by a clinical psychologist, probation officer's report and the psychiatric report in terms of s 286A. This court had the benefit of obtaining 5 victim impact statements for sentence purposes.

Personal circumstance

- [15] The accused is a single, 29 years old and a first offender. Left school in grade 11. He also completed a year and 6 months diploma at a college. At the time of his arrest, he was not formally employed but was a basketball coach for an NPO, called Hout Bay Snipers. The probation officer notes in his report that the accused impressed as open, well spoken and attempted to present himself as honest even though he is still denying that he also raped S[...]. The accused's family has reported to the probation officer that the accused is a generous, loving person and was a beacon of hope for them. According to the social worker

the accused expressed a desire to apologise to the deceased's family.

- [16] Ms Abbas, a clinical psychologist and also a member of the panel that was constituted in terms of s 286A, reported in her report that the accused during interviews with her, was evasive when answering. The report noted that the accused became uncomfortable during discussions regarding his relationships, sexuality, and the offences, stating that he does not feel comfortable speaking in front of the security guard. The report also notes that the accused expressed that he had gender identity confusion during his high school days. The report further indicates that the accused has not been able to truly identify with his with his sexual orientation due to the stigma associated with this both culturally and in his community.
- [17] The clinical psychologist further states that the accused admitted to often masturbating and becoming aroused by watching pornography that included gay content, underage pornography as well as pornography with aggressive, non-consensual themes. It was put to the psychologist that the accused denies that he told her about these preferences. It is significant to note that the psychologist's evidence was not challenged with evidence given under oath. Furthermore, it would fly in the face of reason to believe that the psychologist would simply make up these facts. I thus accept her evidence as being truthful.
- [18] The psychologist's report also reveals that the accused started to use cigarettes at approximately 13 years of age; admitted to the use of cannabis mandrax, tik and joining a gang in prison.
- [19] The accused also indicated to the psychologist that he lost his employment due to abuse of alcohol. He also reported to the psychologist that he preferred to do things at his own pace and time and did not like to take orders.
- [20] The report further states that the accused did not provide any detailed explanation regarding his actions on the day of the offence. According to the psychologist, the accused reported to her that he did not realise the extent to which he had choked the deceased. The accused also admitted he felt rejected by S[...].
- [21] The psychologist reports that the MMPI-2 profile strongly suggests that the accused has antisocial personality traits with a history of problems with authority figures, trouble with the law and violating social norms with no regard for the consequences thereof. She also stated that the accused has the presence of psychopathic and anti-social personality disorder traits and were contributing factors to his offending. She concluded that the accused poses and may continue to pose a serious ongoing threat to victims of similar victimology. She further adds that most of the accused's risk factors are static. Hence, she concludes that the accused is not open to change.
- [22] According to Ms Abbas, the accused was viewed as minimizing the offences for which he has been convicted and exhibiting superficial remorse and lack of empathy. She further stated the following in her report:

“If Mr Minnaar is amenable to receiving targeted interventions during his incarceration in order to address the identified dynamic risks factors, his future risks might be mitigated on future assessment. At this point in time however, I am of the opinion that Mr Minnaar poses a danger to the physical and wellbeing of other persons.”

[23] The panel constituted in terms of s 286A concluded as follows:

“Based on psychiatric and psychological assessment Mr Minnaar does not demonstrate genuine remorse for the offences instead he shows

deceitfulness and lack of empathy. He has antisocial personality traits and features of psychopathy. These inherent personality

characteristics offer a poor prognosis for intervention and rehabilitation.

Mr Minnaar therefore represents a danger to the physical and mental well-being of other persons and should be declared a dangerous criminal as per S 286A of the Criminal Procedure Act, 1977.”

The nature of the offences

[24] No words are adequate to describe what you did. All the charges against the accused stemmed from an exceptionally brutal rape and ligature strangulation murder of S[...], a twelve -year-old boy. Gregoria Biagi testified that when you came with S[...] to his vehicle asking for a lift to Clicks, he observed that S[...] appeared to be stressed or anxious. It was also his observation that S[...] was quiet throughout the trip. S[...]’s age made him completely vulnerable and defenceless. You took advantage of him because you were a coach. You abused the most important position of trust, that of a coach and a community leader of children. This on its own is a highly aggravating factor. I do not believe that this was a random act. I firmly believe that you specifically targeted S[...].

[25] He was alone with you in an isolated area. He tried to get away from you without success. You chased after him with

determination

and speed. The image from the video footage of you chasing S[...] and him running for his life will forever haunt some of those who watched it. One can only wonder what was going through his mind as you were chasing him. When he ran away, you could have stopped. He had no chance against the fast and much older person. You obviously knew this as you chased, raped and killed him. The torment that S[...] endured in your hands is unimaginable. Clearly, S[...]’s vulnerability was not only derived from his age but also from the circumstances of the case.

[26] You were so determined to commit the offences, and nothing could stop you. You showed no mercy to your young victim. Behind the veil of normalcy and calm lies terror, a callous and ruthless individual, prepared to unleash extreme violence to satisfy his depraved morals and to save himself. I had the benefit of watching you through out the trial, you have shown no empathy for

what you did, instead it was clear that you are more concerned about your situation. I do not believe that you care about the impact of your actions on your victims. A child was murdered because of truly selfish reasons.

[27] By all accounts, S[...]’s killing was a deliberate, callous and calculated rape. No child deserves to die like that. You showed no mercy on the totally innocent boy. You showed yourself to be a monster with absolutely no regard to sanctity of human life. S[...]’s killing has all the hallmarks of a cold premeditated murder and rape.

[28] After S[...] did not return home from the previous night; the ensuing days must have been the most appalling time for all his family. They had no idea where he was and no idea what had happened to him. The police and S[...]’s dad asked you if you knew anything about his whereabouts. You told them that you had been with him the previous evening but that you parted ways at the police station and you did not know where he was. You became part of the search team. You outrightly denied any involvement in the murder. And you pretended as if you were helping with the search, whereas you knew that the search was not for S[...] but for his body. Those circumstances together represent seriously aggravating features of this crime.

[29] It need hardly to be pointed out that in this matter there are no mitigating factors and a myriad of aggravating factors. From the beginning up until now you showed no remorse. Until today you don’t want to fully accept what you have done. Instead, you wanted to whitewash what you did. You still remain adamant that you did not rape S[...]. Hence, I do not believe that you will be reluctant to reoffend.

[30] As previously mentioned, I had the benefit of victim impact statements. I consider it unnecessary to refer to them in any detail. In essence they explain, as one would expect, the devastating effects upon every one of the loss of S[...].

[31] I am sure what happened to S[...], a talented young boy with a bright future ahead of him shook the community to the core. What you did is socially reprehensible. I do not think the community will ever forget what you did. Society expects that justice to be carried out. The family of S[...] also cries out for justice. Judging from the victim impact statements and the letter from S[...]’s teacher, I can sense the terror and anguish they must have felt when they learnt about his brutal killing. There is a long list of collateral victims you left in your wake.

What sentence to impose

[32] No amount of sentences would be enough to make up for what you have done or ease the family pain of the horrible loss. I am sure that these proceedings are a little consolation to the heartbroken family. What you did was heinous and it needs to be punished to the full extent of the law. You robbed your victim of life and by not stating what all happened between you and S[...] you robbed the family of possible closure. What you did is horrible and horrific to the family and loved ones S[...] left behind.

[33] As far as an appropriate sentence is concerned, both the State and your legal representative addressed me fully and comprehensively regarding the options that this Court has.

It is common cause that the provisions of s 51 (1) of the CPA are applicable to both the rape and the murder convictions.

[34] Your counsel is requesting that this Court should sentence you in terms of s 286. in essence he agrees that you are a dangerous offender. As such, I am satisfied that you represent a danger to the physical or mental well-being of other persons. Thus, the community needs to be protected against you. I firmly disagree with Mr Brand that this court, in the circumstances, should impose a sentence in terms of s 286 of the CPA.

[35] In this regard I fully endorse the sentiments expressed by Henney J, in *S v Ruiters* 2024 (1) SACR 391 (WCC) (30 November 2023), when he states the following in paras 18, 20 and 21:

“[18] I am therefore satisfied that the accused is a person referred to in terms of s 286A (1) of the CPA. This court however, even if it is satisfied that an accused represents a danger to the physical or mental well-being of other persons and that the community should be protected against the accused, there is no obligation to declare the accused a dangerous criminal as stated in Chavulla.

What also needs to be considered in this particular matter, is that the legislature has deemed it appropriate to prescribe a sentence in terms of the provisions of s 51 (1) of the Criminal Law (sentencing) Amendment Act 105 of 1997 (“the CLAA”) because both these offences falls within Part 1 of Schedule 2 in that the murder was planned or premeditated. The court is obliged to impose the sentence unless it can find that there are substantial and compelling circumstances to deviate from the prescribed sentence of life imprisonment.

[20] What is illustrated by this case is that there is a disconnect between the provisions of the CLAA and the provisions of S 286A of the CPA. The first anomaly is that if a court make a declaration that a person is a dangerous criminal in terms of S 286A(1) of the CPA, it may lead to the court imposing a lesser sentence than life imprisonment. In order to impose a lesser sentence in this case, which is an order declaring the accused to be a dangerous criminal, the court has to find that there are substantial and compelling circumstances to deviate from the most severe sentence which is life imprisonment.

[21] A case can hardly be made out that once a person is viewed to be a dangerous criminal, that, that can constitute a fact for a court to conclude that there are substantial and compelling circumstances. In fact, it should be a consideration that militates against a finding that there are substantial and compelling circumstances. This is a factor which the legislature has

overlooked. It failed to pay due regard to the provisions of s 286A when the provisions of the CLAA were introduced; the provisions of s 286A was completely ignored in the formulation of the CLAA. I think the reason for this was because initially in 1997, when the CLAA was enacted, it was meant to be a temporary measure.”

Conclusion

[36] For all the foregoing reasons, I am persuaded that this Court in the circumstances is not in a position to impose sentence in terms of s 286 of the CPA. Additionally, I find that there are no substantial and compelling circumstances that justify this court to deviate from the sentence prescribed in the CLAA. This was also the theme through the submissions of the parties that there are no substantial and compelling circumstances in this case.

[37] Consequently, the accused is sentenced as follows:

Order:

1. Count one kidnapping: Eight years imprisonment;
2. Count two rape: Life imprisonment
3. Count three murder: Life imprisonment.

[38] The Court further orders that in terms of section 280 (2) CPA, the sentence imposed in count one shall run concurrently with the sentences imposed in counts two and three.

[39] Additionally, the Court makes the following ancillary orders:

1. In terms of s 103 (1) of the Firearms Control Act, Act 60 of 2000, the accused is declared unfit to possess a firearm.
2. In terms of s 120 (4) (a) of the Children’s Act, Act 38 of 2005, the ex lege order that the accused is unfit to work with children remains in effect.
3. In terms of s 119 of the Children’s Act, Act 38 of 2005, the ex lege order that the details of the accused be recorded in the National Child Protection Register, remain in effect.
4. In terms of s 50 (1) (a) of Act 32 of 2007, the ex lege order that the name of the accused be recorded in the National Sexual Offenders Register remain in effect.
5. The Registrar of this Court must furnish a copy of this judgment to the Director General of the Department of Justice. His attention is particularly drawn to paragraphs 2-10 of this

judgment.

6. The Registrar must also furnish the Department of Correctional Services (“DCS”) with the report compiled in terms of section 286A of the CPA and the report compiled by the clinical psychologist (Ms Abba). The attention of the DCS is drawn to the recommendations [aimed at the rehabilitation of Mr Minnaar] made by the Clinical psychologist.

[40] Lastly, what you did to the family of S[...] was horrible, I do hope that for the family of S[...], there is some measure of justice that has prevailed.

NZIWENI J

JUDGE OF THE HIGH COURT

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