

SOUTH AFRICA / JUDGMENT

S v Pitso (Sentence) (KS 7/2025)

[2025] ZANCHC 61 (1 August 2025)

[2025] ZANCHC 61**COURT**

Northern Cape High Court, Kimberley

BEFORE

Lever

CASE / FILE NUMBER

KS 7/2025

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****NORTHERN****CAPE DIVISION, KIMBERLEY****Case****No: KS 7/2025****Reportable:**

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to Magistrates: YES / NO

In

the matter between:

THE

STATE

and

JACOBUS

PITSO

Accused

Coram: Lever J

JUDGMENT

ON SENTENCE

Lever J

1. In this matter the accused faced three charges, namely: two separate charges of assault against different individuals on the same date and in proximity to the incident that led to the third charge; being murder read with the provisions of section 51(1) of Act 105 of 1997, as amended.
 2. On the 28 July 2025 the accused pleaded guilty on all three charges. The accused submitted a written plea under the provisions of section 112(2) of the Criminal Procedure Act[1] (the CPA).
 3. The State accepted this plea of guilty and this court convicted the accused on all three counts based on this written plea. The said written plea was by agreement entered into the record as exhibit “A”.
 4. After conviction Ms Engelbrecht handed up the SAP 69 which was admitted as exhibit “D” and which showed no previous convictions.
 5. The events that led to the death of E[...] F[...] V[...] (the deceased) occurred on the 26 September
2024. The circumstances leading up to the stabbing and death of the deceased were placed before this court in the said written plea, being exhibit “A”.
6. In respect of the murder charge reference to section 51(1) of the said Criminal Law Amended Act of 1997, means if the offence is covered by Part 1 of Schedule 2 of the said act, then there is a mandatory minimum sentence of life imprisonment. The said part 1 of schedule 2 of that act deals with murder where the victim is in a domestic relationship with the alleged murderer. The relevant portion of Part 1 of Schedule 2 reads as follows:

“(g) the death of the victim resulted from physical abuse or sexual abuse, as contemplated in paragraphs
 - (a) and (b) of the definition of ‘domestic violence’ in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998), by the accused who is or was in a domestic relationship, as defined in section 1 of that Act with the victim.”
 7. It was common cause between the State and the defence that the accused was in a domestic relationship with E[...] F[...] V[...], the deceased in relation to the murder charge.
 8. It is not in dispute that the accused and the deceased were involved in a ‘domestic relationship’ and that the death of the deceased resulted from ‘domestic violence’, as both terms are defined in the Domestic Violence Act. Hence the present conviction falls under

Part I of Schedule 2 of the Minimum Sentencing Act. Accordingly, section 51(1) of the Minimum Sentencing Act applies. It follows from this that unless ‘substantial and compelling circumstances’ can be found on the facts of this case as contemplated in section 51(3) of the said Act, the minimum sentence to be imposed on the accused in this case is life imprisonment.

9. The State and the Defence agree that the ‘determinative test’ as set out by the Supreme Court of Appeal (SCA) in the case *S v Malgas*[2] at paragraph [25] sub-paragraph I, is applicable. I will quote paragraph [25] of the *Malgas* judgment in its entirety as it provides valuable insight into the approach to be taken in the application of minimum sentences.

“[25] What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the Legislature’s view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed. In summary –

A. Section 51 has limited but not eliminated the courts’ discretion in imposing sentence in respect of offences referred to in Part I of Schedule 2 (or imprisonment for other specified periods for offences listed in other parts of Schedule 2).

B. Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.

C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.

E. The Legislature has deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored.

F. All factors (other than set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process.

G. The ultimate impact must be measured against the composite yardstick ('substantial and compelling') and must be such as cumulatively justify a departure from the standardised response that the Legislature has ordained.

H. In applying the statutory provisions, it is inappropriately constricting to use the concepts developed in dealing with appeals against sentence as the sole criterion.

I. If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that they would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.[3] (my emphasis)

J. In so doing, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the bench mark which the Legislature has provided.”[4]

10. It is clear from the summary of the findings of the SCA in the Malgas judgment as set out in paragraph 25 thereof, which is quoted above, that all aspects of sentencing are important to determine whether on the facts of this case there are grounds to depart from the statutorily prescribed minimum, on the basis that there are 'substantial and compelling' grounds to do so. That in the application of this determinative test, the cumulative effect of all the said aspects 'determines' whether 'substantial and compelling' grounds have been established.
11. Accordingly, the triad of the crime, the criminal, and the interests of society, as set out in the classic case of *S v ZINN*[5] is the proper point of departure in this exercise.
12. Also, one considers whether on the facts of the instant case, sentence to be imposed should be blended with a measure of mercy. The extent to which mercy is appropriate has been dealt with in the cases of *S v Rabie*[6] and *S v Du Toit*[7].
13. Further, one should also consider the main purposes of punishment, being deterrent, rehabilitative, and retributive effects of such punishment.
14. When considering the personal circumstances of the offender as contemplated in the Zinn case, it is proper to consider whether the

offender has shown remorse. The importance of the distinction between 'regret and remorse' has been set out by Ponnann JA in the case of *S v MATYITYI*[8].

15. The circumstances in which I must determine whether there are substantial and compelling reasons exist on the facts of this case are set out in the written plea already referred to as well as the victim impact report exhibit "E" and the oral evidence of the accused in mitigation of sentence where the accused asked the family of the deceased for forgiveness and expressed remorse for his actions that led to the death of the deceased.

16. In order to be able to assess all of these factors and to assign to each of them their appropriate weight as appropriate in the particular circumstances of this case, it is necessary to quote verbatim a significant portion of the written plea placed before the court. The relevant portion reads as follows:

“[2] The facts to which I plead guilty are as follows: On the night of Thursday, the 26th September 2024 I was at house number 0[...] 1[...] A[...], Stasies Location, Postmasburg which I shared with the deceased, E[...] F[...] V[...].

- [3] The deceased and I were in a domestic relationship for some years. We have a baby boy of five (5) years old born from our relationship. The child is currently residing with the deceased’s parents in Griekwastad.
- [4] On the evening of 26th September 2024 the deceased and I were sitting with her friend A[...] T[...], the complainant in count
2. We were drinking some Black label beers outside A[...]’s room which is situated at the back of my family house.
- [5] Although I consumed liquor as set out above, I appreciated the wrongfulness of my actions, and I further admit that I was capable of acting in accordance with that appreciation.
- [6] Mr T[...] v[...] W[...] the complainant on count 1 arrived at our home, looking for my younger brother Shorty. I thought that was very strange as he passed the main house and came to us at the back of the house. In my mind, that confirmed the suspicion I had that Mr Van Wyk and the deceased were having a relationship behind my back. I was convinced that he probably came there looking for the deceased.
- [7] I confronted him, and he denied the allegation, a physical fight then ensued between myself and T[...] v[...] W[...]. I ran into the house to get a knife which I used to threaten and chase him with. He ran around my family house and eventually ran out of the yard.
- [8] Upon my return to the yard from chasing Tiaan, I was very infuriated with the deceased thinking about the years we had been together. I was overwhelmed by anger, and I started to stab the deceased randomly on her body. A[...] tried to intervene, and I pushed her away and she fell on her knees. The deceased got an opportunity to run away and ran out of the yard. I chased after her and continued stabbing her randomly on her body even after she had fallen down.
- [9] A[...] came running and pushed me away from the deceased and threw stones at me. I ran towards the Transnet Railway just to calm myself. After spending some time in the open veld the realisation of what I had done hit me and I walked back home.

- [10] On the way home so many thoughts were going through my mind realising that I have killed the mother of my child. I went into my bedroom, took a knife and tried to cut my neck, but the knife was not sharp enough. I took a rope and tied it around my neck and wanted to use it to hang myself. My father walked into the room and stopped me from hanging myself.
- [11] The police arrived and when the ambulance personnel arrived, it was confirmed that the deceased had passed away. I was then arrested for killing the deceased.
- [12] I admit that when chasing T[...] v[...] W[...] the complainant in count 1 with the knife, he was not posing any danger to me, further there was no justification for me to do so. I admit that I am guilty of the offence of assault as I made him believe that I will stab him with that knife.
- [13] I admit that when I pushed A[...] T[...], the complainant in count 2, causing her to fall on her knees I had no justification for doing so as she was protecting the deceased whom I was stabbing with the knife. Therefore, she had every reason to protect the deceased and my actions of pushing her were not justified. I admit that I am guilty of assault on her as well.
- [14] I admit that while stabbing the deceased randomly all over her body, I was so infuriated that I did not care whether she (lived) or died as a result of her injuries. I only stopped stabbing the deceased when A[...] T[...] pushed me away.
- [15] I was advised by my legal representative that I inflicted 9 stab wounds on the body of the deceased as indicated by the pathologist who conducted the postmortem.
- [16] Given the number of the stab wounds, the object used to stab the deceased and my actions of following and continuously stabbing the deceased after she had run away, I admit that it indicates that I had the intention to kill her. I admit that my actions made me guilty of murder with direct intention. ...”
17. As already stated, the plea was accepted by the State and therefore the State accepts the evidence set out above.
18. In the rest of the plea under the provisions of section 212(2) of the CPA, being exhibit “A” in these proceedings, the accused made certain formal admissions under the provisions of section 220 of the CPA.
19. Ms Engelbrecht who appeared for the State in this matter produced a victim impact report, which was handed in by consent as exhibit “E” and which was accordingly read into the record.
20. The said victim impact report deals with the deceased’s family background and her upbringing in Griekwastad. Contentions are made in this victim impact report that during their time together the relationship between the deceased and the accused was troubled by physical and emotional abuse of the deceased by the accused. These contentions were not challenged by the defence. The parents of the deceased informed the social worker who conducted the victim assessment report that the accused deprived the deceased of her dignity, sense of worth and that the accused instilled a sense of fear and hopelessness in the

deceased.

21. The child born of the union between the deceased and the accused has been taken in by the parents of the deceased along with a child of the deceased from an earlier relationship. The mother of the deceased has been forced to take up temporary employment in Gauteng in order to provide for the financial well-being of such children.
22. Exhibit “E” clearly establishes that the murder of the deceased has left emotional scars on her family that they are experiencing difficulty coming to terms with. The deceased’s family is not yet able to consider forgiving the accused. Their distress emerges clearly from exhibit “E”. The deceased’s family and her children will suffer a negative impact from her murder for years to come.
23. The accused took to the witness stand and gave evidence under oath. His evidence was to the effect that he appreciates now that his actions have caused the deceased’s family pain that will never go away. He acknowledged that the deceased’s children will now grow up without their mother. That his child will grow up without a mother and with a father in jail. He testified that he acted in anger without thinking. He testified that he had attempted to commit suicide. He asked for forgiveness from the deceased’s family and said he was genuinely sorry.
24. The State accepted this evidence and the accused was not cross-examined on the testimony that he provided under oath.
25. Then Mr Biyela who represented the accused made submissions from the Bar. From these submissions, the following emerged as the accused’s personal circumstances: He is a 29-year-old male; he is not married; He has two children, an eleven year old daughter from a previous relationship and a five year old boy born out of the relationship with the deceased; The oldest child resides with his family and the youngest child resides with the deceased’s family; he was gainfully employed by Airfields Garden Service as a general worker; he earned a wage of R150 per day; he went as far as grade 9 with his schooling; he has no previous convictions; he does not have any pending cases; and he has been in custody since his arrest on the 26th September 2024, a period of approximately 9 months.
26. Mr Biyela further submitted that the accused was: overwhelmed by emotions; he did not think things through; he acted out of character when committing the offences of assault and murder; that alcohol played some part in the commission of these offences of assault and murder; that if the accused was completely sober on the night in question events may well have turned out differently; the accused was gainfully employed; the accused pleaded guilty; he took responsibility for his actions and did not try and make excuses; his attempts at suicide are an indication that he appreciates the enormity of what he has done; and that he has tendered a genuine apology.
27. Mr Biyela submitted that all of this taken collectively amount to substantial and compelling circumstances to depart from the

prescribed minimum sentence set out in section 51(1) of the Criminal Law Amendment Act 1997.

28. Turning to the first leg of the triad referred to above being the circumstances of the accused. The personal circumstances of the accused, his mental state when committing the crimes in question have been set out above.
29. The next leg of the triad referred to above relates to the crime committed. Mr Biyela for the accused correctly concedes that the murder of an intimate life partner is a very serious offence which is prevalent in the area of this court's jurisdiction. The assaults he concedes are also serious.
30. The final leg of the said triad is the interests of society. Here Ms Engelbrecht emphasised that gender violence is endemic and that it is in the interests of society that 'deterrence' come to the fore in the context of the case. That in those circumstances she submitted this court should not depart from the statutorily prescribed minimum sentence of life imprisonment.
31. The case of *S v KRUGER*[9] succinctly illustrates the balancing exercise required in imposing a sentence on a particular accused, where Shongwe JA states: "Punishing a convicted person should not be likened to taking revenge. It must have all the elements and purposes of punishment, prevention, retribution, individual and general deterrence, and rehabilitation." [10] Of course the relative weight to be attached to each of these elements and purposes of punishment varies with the circumstances of every case.
32. The case of *S v MHLAKAZA & ANOTHER*[11] is authority for the proposition that a sentencing court should always be aware that the process of sentencing is not to satisfy public opinion but to serve the public interest. That a sentencing policy that caters predominantly or exclusively for public opinion, is inherently flawed. The court's duty is to fearlessly impose a fair sentence even if such sentence does not satisfy the public. With respect to the SCA, that position cannot be challenged.
33. It remains the duty of this court to impose a fair and just sentence on the accused. This is done by considering all relevant factors and to find the appropriate balance between often competing factors that would lead to a fair and just sentence in all the circumstances of a particular case.
34. The aggravating circumstances in the present case include: The accused reacted violently in circumstances where such violence cannot be justified; The deceased was in an intimate relationship with the accused; Given the value our society places on life, murder is a most serious offence; the present crime is a clear example of gender based violence which is worryingly prevalent in our society; the deceased was murdered in her own home where she ought to have been safe; and the accused had formed a direct intention to kill the deceased.

35. The mitigating factors to be weighed against the aggravating factors include: The accused has shown remorse which appears to be genuine; the accused pleaded guilty to all of the charges and appears to have taken full responsibility for his actions; the accused has apologised to the family of the deceased; it is clear that the events leading up to the death of the deceased took place in an emotionally charged atmosphere; the circumstances show that the murder was not planned or pre-meditated; these charges are the accused's first brush with the law, he was approximately 28 years old when these crimes were committed; he is thus not an inherently or habitually a lawless person; and finally, the accused made two attempts to take his own life after he committed the murder as well as the assaults relevant to this matter.
36. The circumstances of this case show that the chances of the accused offending again are minimal. The evidence shows that such relationship was characterised by arguments, but there was no evidence that these were violent arguments. The accused had reached his late twenties before he came into conflict with the law. It is not likely that the circumstances that led to the present tragedy will be repeated.
37. All of the above circumstances and the cumulative effect thereof, lead me to the conclusion that it would be unjust to impose a life sentence on the accused in this matter. In these circumstances I find that there are substantial and compelling reasons to depart from the statutorily prescribed minimum sentence of life imprisonment. In particular, on the facts of the present case, I rely on the following facts and circumstances in reaching this conclusion: The accused is a first offender and his first brush with the law relates to the case at hand which occurred in his late twenties; The emotionally charged atmosphere that prevailed when the crimes were committed, he believed his life partner and the complainant in count 1 were cheating on him; The murder was not pre-planned; The accused took responsibility for his actions and pleaded guilty; The accused apologised to the family of the deceased for killing the deceased and the pain he had inflicted on them; The accused tried to take his own life on 2 occasions; The remorse shown by the accused is I believe genuine; and The accused has realistic prospects of rehabilitation.
38. The exercise in balancing the competing elements relating to the sentencing process has been conducted in determining the existence of substantial and compelling reasons, what remains is to actually impose a fair and just sentence on the accused in respect of the three crimes for which he has been convicted.
39. It is convenient to deal with the conviction of murder first in this sentencing process. The accused has murdered his intimate life partner. Instances of femicide are far too prevalent in this court's jurisdiction. Whilst a sentence of life imprisonment may not serve justice on the facts of the present case, the need for a general deterrent for the crime of femicide must

play a prominent role in sentencing the accused, but not at the expense of all the other considerations in passing a sentence on the accused. In all the circumstances of this case, a long period of direct imprisonment is certainly called for and is appropriate.

40. Also, I must take into account that the accused has already spent approximately 9 months in prison up to his conviction. It is not simply a matter of applying an arithmetic process in reaching the ultimate sentence to be imposed on the accused. What is required is that considering the time already spent in custody together with all the other factors relevant in sentencing, the ultimate sentence imposed must be 'just' in all those circumstances.
41. On the conviction of murder, being count 3, I believe the appropriate sentence in all the circumstances set out above is twenty
(20) years imprisonment.
42. On the conviction in respect of count 1, being the conviction for the assault on T[...] v[...] W[...] I believe the appropriate sentence is two (2) years direct imprisonment.
43. In respect of the conviction on count 2, being the assault on A[...] T[...] I believe the appropriate sentence is one (1) year direct imprisonment.
44. In the circumstances of this case, it is appropriate that the sentences imposed in respect of counts 1 and 2 should run concurrently with the sentence imposed in respect of count 3.
45. The accused did not wish to make representations as to why he should not be declared unfit to possess a firearm. Having regard to the provisions of section 103 of the Firearms Control Act[12] and the crimes for which the accused has been convicted, the accused is declared unfit to possess a firearm.

In the circumstances, the following sentences are imposed on the accused:

- 1) Count 1 – Two (2) years imprisonment.
- 2) Count 2 – One (1) year imprisonment.
- 3) Count 3 – Twenty (20) years imprisonment.
- 4) The sentences in respect of counts 1 and 2 will run concurrently with the sentence imposed in respect of count 3.
- 5) Under the provisions of section 103 of Act 60 of 2000 the accused is declared unfit to possess a firearm.

L. G. Lever

Judge

Northern Cape Division, Kimberley

Representation:

For the State:

ADV M ENGELBRECHT

Instructed by:

DIRECTOR OF PUBLIC PROSECUTIONS

For the Accused:

MR K BIYELA

Instructed by:

LEGAL AID SA, KIMBERLEY

Date of Judgment:

01 AUGUST 2025

[1] Act 51 of 1977.

[2] 2001 (1) SACR 469 (SCA) at para [25] I.

[3] This is the ‘determinative test’. The determinative test has also been set out in slightly more detail and in different

language in paragraph [22] of the Malgas judgment.

[4] Malgas., above at para [25].

[5] 1969 (2) SA 537 (A).

[6] 1975 (4) SA 855 (A) at 862G and particularly at 866A – C.

[7] 1979 (3) SA 846 (A) at 857H to 858B.

[8] 2011 (1) SACR 40 (SCA) AT 47a-d.

[9] 2012 (1) SACR 369 (SCA) at para [11].

[10] Kruger case., above at para [11].

[11] 1997 (1) SACR 515 (SCA) at 518e.

[12] Act 60 of 2000.

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