

SOUTH AFRICA / JUDGMENT

S v Prinsloo (Sentence) (CC10/2024) [2025] ZAGPPHC 327 (24 March 2025)

[2025] ZAGPPHC 327

COURT

North Gauteng High Court, Pretoria

BEFORE

Munzhelele

CASE / FILE NUMBER

CC10/2024

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC10/2024

(1) Reportable: No.

(2) Of interest to other judges: No

(3) Revised.

Date 24 March 2025

Signature

In the matter between:

THE STATE

and

PAUL PHILIPPUS PRINSLOO

ACCUSED

JUDGMENT ON SENTENCE

Munzhelele J

[1] On 17 March 2025, the accused was found guilty on two counts of murder, read with section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the Act"), as the murders were found to be premeditated. During the sentencing proceedings, counsel for the accused, called J.C. Wolmarans, a social worker, who had compiled a pre-sentence report and testified based on her findings. She stated that the accused is 63 years of age, unemployed, and dependent on money received from his late father's estate. He was married to the deceased, Magdalene Prinsloo, and they lived together for 14 years at 1[...] C[...] Street, Kosmos Village, Hartbeespoort Dam, along with Ruzanne Weideman and her daughter, Rualize Weideman. The accused owns a house currently rented to Mr. Werner Steyn, as there are no remaining occupants.

The accused was previously married and has three adult children from that marriage. Regarding his health, the accused was diagnosed with stage 1 cancer in 2007 and recovered by the end of 2008. In 2023, he experienced internal bleeding and was again diagnosed with cancer. He was scheduled for a follow-up session with Dr. Heyns at Pretoria East Hospital and remains on chronic medication.

[2] The accused completed Grade 12 but did not complete his tertiary education. He worked in various capacities but was unemployed at the time of the offence. He has been in custody since his arrest. During the sentencing proceedings, the State did not prove any previous convictions against him; however, his counsel disclosed that he had a previous conviction for employing illegal immigrants, for which he paid an admission of guilt fine. This is the first time the accused has been convicted of a violent crime.

The accused acknowledged that his relationship with the deceased was loving but characterized by periodic arguments. Their relationship deteriorated during 2022 and 2023, during which time the accused abused alcohol extensively. He attended rehabilitation centers in an attempt to recover, where he met his friend, Mr. Pienaar. The social worker recommended a sentence of direct imprisonment, in this regard.

[3] The State called Anna Caroline Klein, the sister of the deceased, who confirmed that while the accused and the deceased occasionally argued, he had previously shown love for the deceased.

[4] Counsel for the accused argued that, the court should deviate from imposing life imprisonment due to the following factors:

- The advanced age of the accused (63 years old);
- His history of illness, including a past cancer diagnosis and recent internal bleeding, necessitating chronic medication and ongoing medical care;
- The fact that he is a first-time offender in relation to violent crimes;
- His extended period of incarceration since his arrest;

- His expression of remorse;
- The history of marital problems between him and the deceased.

Counsel for the defense also submitted that, the court should consider the principles of sentencing outlined in *S v Scott-Crossley* (677/06) [2007] ZASCA 127; 2008 (1) SA 404 (SCA); 2008 (1) SACR 223 (SCA) (28 September 2007), where the court held:

"[35] Plainly, any sentence imposed must have deterrent and retributive force. But of course, one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishment, they are not the only ones, or for that matter, even the overriding ones. Against that, must be weighed the appellant's prospects of reformation and rehabilitation, which appear to be good. It is true that it is in the interests of justice that crime should be punished. However, punishment that is excessive, serves neither the interests of justice nor those of society."

Counsel further referenced *S v Mathe* (CC 69/2011) [2014] ZAKZDHC 15; 2014 (2) SACR 298 (KZD) (24 April 2014), in which the court imposed a 10-year sentence for murder, and *Director of Public Prosecutions (Transvaal) v Venter* (430/07) [2008] ZASCA 76;

[2008] 4 All SA 132 (SCA); 2009 (1) SACR 165 (SCA) (30 May 2008), where a sentence of 18 years' imprisonment was imposed for multiple counts of murder.

[5] The State argued that the offence constitutes gender-based violence, which has reached pandemic levels. The murders were premeditated. The State relied on the case of *S v Kasongo* (CC110/2019) [2022] ZAWCHC 224; 2023 (1) SACR 321 (WCC) (4 November 2022), where Thulare J stated that, on para 15:

"[15] The killing of women by male intimate partners, is the most extreme form of intimate partner violence as well as the most extreme consequence of intimate partner violence. Her research showed that, almost three women were killed by their intimate partners per day in South Africa. Data from 66 countries in 2013 found that globally, 33% of homicides of women were committed by an intimate partner. In comparison, in 2017, 52% of women were killed by intimate partners. Intimate femicide is much more common in South Africa than in most countries in the world—52% versus 36%—indicating that our rate is almost five times the global rate."

In *Kasongo*, the accused was sentenced to life imprisonment for premeditated murder.

[6] The State further argued that the accused is not genuinely remorseful but merely expressing regret. It submitted that the accused's personal circumstances should recede into the background when determining an appropriate sentence. Given the gravity of the offence, the State contended that life imprisonment is warranted. The advanced age of the accused should not be considered a substantial and compelling circumstance justifying deviation from the prescribed minimum sentence. Accordingly, the State submitted that there are no substantial and compelling circumstances warranting a departure from the mandatory life

sentence.

[7] In *S v Malgas* 2001 (2) SA 1222 (SCA), the Supreme Court of Appeal held at paragraph 8 that:

"[8] In what respects was it no longer to be business as usual? First, a court was not to be given a clean slate on which to inscribe whatever sentence it thought fit. Instead, it was required to approach that question, conscious of the fact that the Legislature has ordained life imprisonment or the prescribed period of imprisonment, as the sentence which should ordinarily be imposed for the commission of the listed crimes in the specified circumstances."

[8] In essence, the Legislature sought to ensure a severe, standardized, and consistent judicial response, to the commission of such crimes as murder, unless there were truly compelling reasons justifying a deviation. In sentencing considerations, the emphasis must shift to the objective gravity of the crime and the public interest in the effective imposition of sanctions. However, this does not imply that all other considerations must be disregarded. Courts retain a residual discretion to impose a

lesser sentence, where compelling circumstances exist, recognizing that rigid adherence to prescribed sentences should, in certain

instances, lead to unjust outcomes. (See *S v Kasongo* at para 23.)

[9] In *Benedict Moagi Peloeole v The Director of Public Prosecutions, Gauteng* (740/2022) [2022] ZASCA 117 (16 August 2022), the facts were as follows:

"On 11 June 2018, the appellant was convicted on two counts of murder. The High Court found that on 12 September 2015, at his residence in Westville, Pretoria West, he fatally shot his wife, Mrs. J[...] K[...] P[...] (42), and his daughter, Ms. T[...] T[...] P[...] (23), with his service pistol. The Supreme Court of Appeal found that the murders were premeditated and that the high court erred in deviating from the imposition of life imprisonment. Section 51(1), read with Schedule 2, Part 1 of the Act, prescribes a sentence of life imprisonment where the murder was planned or premeditated. The Supreme Court emphasized that heinous crimes committed against women in South Africa have reached epidemic proportions."

"Apart from acknowledging this, the High Court failed to consider other aggravating factors, including: the unprovoked manner in which the appellant shot his wife and daughter at close range, his prior history of domestic violence, and the trauma inflicted upon his two nephews, who were witnesses to the execution of the deceased."

[10] The views expressed by the Supreme Court of Appeal in *S v Matyityi* (695/09) [2010] ZASCA 127; 2011 (1) SACR 40 (SCA) at paragraph 23, remain instructive. Ponnann JA stated that:

"Despite certain limited successes, there has been no real let-up in the crime pandemic engulfing our country. The situation remains alarming. To borrow from Malgas, it still is 'no longer business as usual'. And yet, all too frequently, sentencing courts demonstrate a willingness to deviate from minimum sentences prescribed by the Legislature for the flimsiest of reasons—reasons that would not survive scrutiny. As Malgas makes plain, courts have a duty, despite any personal doubts about the efficacy of the policy or aversion to it, to implement those sentences."

"Our courts derive their power from the Constitution and, like other arms of State, owe their fealty to it. The constitutional order cannot survive, if courts fail to respect the legitimate domains of power of other branches of government. Parliament has spoken. It has ordained minimum sentences for certain offences like murder, and courts are obliged to impose those sentences unless truly convincing reasons justifying a departure. Courts are not free to subvert legislative intent by resorting to vague, ill-defined concepts such as 'relative youthfulness' or other subjective hypotheses that align with a particular sentencing officer's personal notion of fairness. Predictable outcomes, not individual judicial discretion, underpin the rule of law, which lies at the heart of our constitutional order."

[11] The Constitutional Court, in *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; 1995 (2) SACR 1 (6 June 1995), emphasized at paragraph 117 that:

"The need for a strong deterrent to violent crime is an end, the validity of which is not open to question. . . It is of fundamental importance to the future of our country that respect for the law should be restored, and that dangerous criminals should be apprehended and dealt with firmly."

[12] In the present case, the accused is 63 years old. While advanced age may be considered a mitigating factor, particularly if it affects the accused's ability to endure a lengthy prison sentence, South African case laws has consistently held that age alone does not constitute a substantial and compelling circumstance, justifying deviation from a prescribed minimum sentence. Courts require additional mitigating factors, such as ill health or diminished capacity, to justify such a departure.

In *S v JA 1717 (2) SACR 143 (NCK)*, the appellant (aged 59) was convicted of raping his 12-year-old daughter. The court determined that his "relatively advanced age" did not warrant a deviation from the life imprisonment sentence. Similarly, in *Merile v S*

[2021] ZAECHC 7, where the appellant (aged 66) was convicted of rape, the court held that:

"The advancement of age as such, is not in itself a compelling circumstance for deviation. The appellant argued that his age should be considered a substantial and compelling circumstance. The court disagreed, emphasizing that, advanced age alone does not justify a lesser sentence, especially in the absence of other mitigating factors such as ill-health."

The Supreme Court of Appeal case, in *S v Abrahams* 2002 (1) SACR 116 (SCA) at paragraph 27, where life imprisonment was prescribed, held that the appellant's age (53 at the time of the offence and 54 at sentencing) was not a mitigating factor warranting deviation.

- [13] Accordingly, the accused's age must be evaluated alongside other considerations. While he suffers from chronic cancer and requires ongoing medical treatment, this factor alone may constitute a mitigating circumstance warranting deviation from the prescribed minimum sentence. However, the determination must be made in light of all relevant case law and circumstances of this case.
- [14] The murder of one's own spouse and child is an extremely serious offence, constituting an egregious abuse of trust. This case involves double murder, an aggravating factor. Courts view domestic violence-related homicides particularly harshly, as they represent a profound violation of a duty to protect one's family. Such offences necessitate a deterrent approach, as articulated in the cases discussed above, like the constitutional case of *Makwanyane*.
- [15] The fact that the accused is a first-time offender does not, in itself, justify a lesser sentence or constitute a substantial and compelling circumstance. A single mitigating factor is rarely sufficient to warrant deviation from the prescribed minimum sentence. Rather, mitigating factors must be assessed cumulatively. The accused's period of incarceration since his arrest is a relevant factor, but must be considered in conjunction with other circumstances.

While there was a history of discord between the accused and the deceased, this factor did not result in such extreme emotional distress as to justify his actions. The accused explicitly informed his friend, Mr. Pienaar, that he intended to kill three people, demonstrating premeditation. Although prior domestic violence may serve as a mitigating factor in certain contexts, it does not excuse murder but must instead be weighed among other considerations in determining whether substantial and compelling circumstances exist to justify deviation from the prescribed sentences.

- [16] In *S v Matyityi* (695/09) [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) (30 September 2010), the issue of remorse was considered. According to case law:

"[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 (S v Barnard 2004 (1) SACR 191 (SCA) at 197). 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 (S v Martin 1996 (2) SACR 378 (W) at 383g-i). Many accused persons might well regret their conduct, but that does not, without more, translate into genuine remorse (S v Mokoena 2009 (2) SACR 309 (SCA) para 9). Remorse is a gnawing pain of conscience for the plight of another. Thus, genuine contrition can only arise from an appreciation and acknowledgment of the extent of one's error (S v D 1995 (1) SACR 259 (A) at 261a-c). Whether the offender is sincerely remorseful, and not simply feeling sorry for

himself or herself for having been caught, is a factual question. The surrounding actions of the accused, rather than his statements in court, should be considered in order to find remorse. (S v Volkwyn 1995 (1) SACR 286 (A)). For remorse to be a valid consideration, the penitence must be sincere, and the accused must take the court fully into his or her confidence (S v Seegers 1970 (2) SA 506 (A)). 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 crime; what has since provoked his or her change of heart; and whether he or she does indeed have a true understanding 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." Taking into consideration the case at hand and the case of Matiyi, this is my finding:

- [17] Genuine remorse is a significant mitigating factor, particularly when the accused takes full responsibility for the crime, which, in this case, the accused has done. The accused has demonstrated accountability by expressing intent to make financial contributions from his estate to Rualize, the child who has now lost her mother. This demonstrates genuine concern for the child's plight.

Furthermore, the accused has shown remorse through his actions, including cooperation with law enforcement authorities. However, there is no evidence that he has personally apologized to the victims' family. The accused's guilty plea saved the court time, spared the victims' families the trauma of a trial, and demonstrated his acceptance of responsibility.

- [18] The following circumstances, when considered cumulatively, constitute substantial and compelling circumstances by this court:

The accused's remorse, coupled with his expressed concern for the well-being of Rualize.

His cooperation with the law enforcement.

His guilty plea.

His advanced age, combined with his chronic illness, specifically cancer, which is an ill health and requires ongoing medical treatment.

- [19] These mitigating factors, when considered together, outweigh the aggravating factors. Accordingly, they constitute a substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence.

- [20] Both the State and the defense agree that the offences committed are of a grave nature and warrant a custodial sentence. I concur that a custodial sentence is an appropriate sentencing in this regard. Sentencing is within the discretion of the trial court. Courts have imposed varying terms of imprisonment in murder cases as I have indicated above, depending on the circumstances of each case. It is imperative that the sentence serves as a deterrent, to prevent the commission of similar offences in the future. Violent crimes

necessitate both preventive and deterrent measures when sentencing is imposed. However, the court must not impose a sentence out of anger, but rather ensure that it is just and appropriate in the circumstances.

[21] Having considered the accused's personal circumstances, the seriousness of the offences, the interests of society, and the best interests of Rualize, I find the following sentence to be appropriate:

On Count 1, the accused is sentenced to 20 years' imprisonment.

On Count 2, the accused is sentenced to 20 years' imprisonment.

Fifteen

(15) years of the sentence on Count 2 shall run concurrently with the sentence on Count 1.

The accused shall, therefore, serve an effective sentence of 25 years' imprisonment.

Ancillary Orders

1. In terms of Section 103 (1) of firearms control act 60 of 2000 the accused is deemed unfit to possess the firearm.
2. In terms of section 103 (4) of firearms controls act 60 of 2000. The court makes an order for search and seizure of accused's premises for firearms, ammunitions licenses and or competency certificates.
3. In terms of section 299A (1) of Act 51 of 1977, the court informs the family of the deceased that they have a right to make representations to the commissioner of the correctional services when placement of the prisoner on parole is considered, to attend any relevant meetings of the parole board, when the accused's parole is to be decided. This is subject to the directive issued by the commissioner of correctional services under section 4 of the correctional services Act.
4. Accused has the right to appeal the conviction and sentences which were imposed on him today. You can request the legal aid attorneys or an attorney where you pay out of your own pocket to assist you, in bringing a substantive application for leave to appeal the conviction and sentences, within 14 days of this sentence. If your application is later than 14 days, then you should apply for a condonation, to be allowed an extension of time, to file the application for leave to appeal out of time.

M. Munzhelele

Judge of the High Court Pretoria

Heard: 10, 17 and 19 March 2025 Delivered: 24 March 2025 Counsel for the State: Adv. Khosa.

Counsel for the Accused: Mr. Moldenhauer.

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Prepared on 8 October 2026 · Esheria