

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

Case Number: A 244/2013

Date: 7 February 2014

Not reportable

Not of interest to other judges

In the matter of:

Williaml Mathipa

Appellant

Versus

State

JUDGMENT

Maumela J.

1. This is an appeal where leave to appeal against sentence was granted by the Supreme Court of Appeal. A sentence to life imprisonment was imposed upon the Appellant by the Honourable Justice Classen, on the 22nd of September 2004.
2. Before the Regional court, sitting at Ellisras in Limpopo, the Appellant was charged with the offence of Rape, read with the provisions of Section 51 (2) of the Criminal Law Amendment Act 1997: (Act No: 105 Of 1997), herein after referred to as the Criminal Law Amendment Act.
3. The allegations were that upon or about the 5th of October 2003, and at or near Phalala in the Regional Division of the then Northern Transvaal, the accused did unlawfully and intentionally have sexual intercourse with a female person, to wit, M[...] M[...] L[...], then 10 years old, without her consent. Before the Regional Court, the Appellant pleaded Guilty. To that end, he submitted a statement in terms of Section 112 (2) of the

Criminal Procedure Act 1977: (Act No 51 of 1977), herein after referred to as the Criminal Law Amendment Act.

4. In the Section 112 (2) statement, the Appellant admitted all the elements in the charge he was facing. He was convicted of Rape in contravention of Section 51(2) of the Criminal Law Amendment Act 1997; (Act No 105 of 1997). In line with the relevant legislation, the Appellant's case was referred to the High Court for purposes of sentencing.

5. From the record, it appears that the High Court did not assess the evidence adduced before the court a *quo*, but simply set out to impose the sentence mentioned above. However, the case is before this court as an appeal against sentence only. It is also within the powers of this court to rectify the failure of the High court to enquire into the correctness or otherwise of the manner in which the High Court came to confirm the conviction arrived at by the Regional Court.

6. For the offence in issue in this case, Section 51 (2) prescribes a minimum sentence of not less than 15 years for a First offender. The same section prescribes terms of imprisonment for not less than 20 years, and 25 years for Second, and Third offenders respectively.

7. At the time of sentencing, the Appellant had previous convictions to his name:

(i). In 1991, on the 20th of March, the Appellant was convicted on a charge of Malicious Damage to Property. He was sentenced to undergo 3 (three) months imprisonment.

(ii). 1998, on the 6th of August, the Appellant was convicted on a charge of Malicious Damage to Property. He was sentenced to pay a fine of R 300-00 (three hundred rand), or to undergo 3, (three) months imprisonment.

(iii). In 1999, on the 24th of March, the Appellant was convicted for an offence of Indecent Assault in contravention of Section 23 of the Sexual Offences Act, No 23 of 1957. He was sentenced to undergo 60(sixty) months imprisonment.

(iv). In 2003, on the 8th of April, the Appellant was convicted of an offence of Theft. He was sentenced to pay a fine of R 1 200-00, or to undergo 6 months imprisonment.

8. At the time he was sentenced, the Appellant 29 years of age. He attended school up to standard 5. Around the time of his arrest, he was unemployed. However, by the time he was sentenced, he had acquired a job from 2010 to 2011.

ORDER.

1. The appeal against sentence succeeds.
2. The sentence to life imprisonment, imposed upon the appellant by this High Court on the 22nd of September 2004 is set aside and is substituted by the following sentence:

The Appellant is sentenced to undergo 18 (eighteen) years imprisonment, antedated to the day of his sentence before the High Court.

TAMAUMELA J

JUDGE OF THE HIGH COURT

I AGREE

H J FABRICIUS J

JUDGE OF THE HIGH COURT

I AGREE

SWARTZ E AJ

JUDGE OF THE HIGH COURT