IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: AR108/16

In the matter between:

WANDERBOY MSHO NKWANYANA **Appellant**

And

THE STATE **Respondent**

APPEAL JUDGMENT

Delivered on: 27 September 2016

MBATHA J:

[1] The appellant was convicted by the Regional Court sitting at Esikhawini, Empangeni District for rape and two counts of robbery with aggravating circumstances. He was sentenced to life imprisonment in respect of the charge of rape and 15 years' in respect of each count of robbery. The sentences of 15 years' imprisonment in respect of the robbery counts were ordered to run concurrently with the sentence of life imprisonment on the rape conviction.

[2] The appellant only appeals against count 1, the rape conviction. This is confirmed by a letter signed by the appellant in January 2016. It was filed with the

Clerk of the Criminal Court, Esikhawini on 20 January 2016. The letter is addressed to the High Court, Pietermaritzburg. It reads as follows:

> 'I, the undersigned Wanderboy Msho Nkwanyana, the appellant herein, hereby confirm that I am not appealing against conviction and sentence in robbery, and the third count. I am only appealing against conviction and sentence in respect of the rape charge. I hope this is in order.'

The signature of the appellant is appended thereto. This was confirmed by the appellant in court, whereby the court informed him that should the appeal be upheld on the rape conviction, the court will use its powers of review to deal with the robbery counts should it be necessary.

[3] The appeal against both conviction and sentence on the rape conviction is before us in terms of section 309B of the Criminal Procedure Act,[1] which provides for the right of automatic appeal without leave of the court *a quo*, where a sentence of life imprisonment is imposed.

[4] On behalf of the appellant it is submitted that the complainant as reflected on the charge sheet was 15 years old on 26 April 2011, being the date of the incident. As a result thereof she would have been below the age of 18 years when she testified in court on 3 February 2014. In the light thereof, it was agrued, the magistrate erred in failing to conduct a competency test to determine whether the complainant knew the difference between the truth and lies and if she understood the importance of an oath.

[5] The charge sheet refers to the unlawful act of sexual penetration which was committed against 'B H 15 years', without her consent. This being in contravention of

[1] Act 51 of 1977

section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act[2] read with the provisions of section 51 and 52 of the Criminal Law Amendment Act.[3] It states further that she was gang raped.

[6] At the time when the complainant testified in court, the learned magistrate after ascertaining the names of the complainant enquired as to her age. Her response was that 'I am 19 years old.' That was not contradicted. She was sworn in and furnished evidence without any objection being made. There is no merit in the challenge to her competence.

[7] The appellant argues that the DNA results given by the expert witness Ms Thomas were inconclusive and should have been rejected by the court *a quo*. It is submitted that such evidence was circumstantial in nature and did not exclude other reasonable inferences.

[8] It is common cause that the appellant tendered a plea of not guilty without disclosing the basis of his defence. After the complainant had testified, the complainant was not cross-examined by the defence as well as the state witnesses save for one witness. At the end of the state's case the appellant closed his case without giving evidence or calling witnesses at his trial. He did not challenge the evidence of the complainant and her witnesses, including the evidence given by Ms Thomas relating to her analysis and findings on DNA.

[9] It can be accepted that Ms Thomas, a B.Sc Honours graduate with majors in Microbiology and Biochemistry from the University of the North and who has been working in Forensic Science Laboratory for nine years at the time when she gave evidence is an expert in her field.

[2] Act 32 of 2007
[3] Act 105 of 1997

[10] She first described to the court that each and every person has unique DNA, save for identical twins, irrespective of where it is obtained from that person's body. At the Forensic Laboratory they make use of ten regions for DNA profiling. One is for gender determination and the other nine remaining regions are the ones that make ones DNA unique from other persons.

[11] She described a full DNA profile as a profile where there is one contributor and a mixture DNA profile when more than one person has donated to that particular DNA profile. She stated that in the present case two sexual assault evidence kits were received by the laboratory under Cas 258/04/2011. One had the serial number 08 marked H B and the other had serial number 09 marked H C.P. The sexual evidence kits came with samples 07 marked K S.M. and another sample 07 marked WM N. All these exhibits were subjected to DNA analysis.

[12] The sexual assault kit swab was obtained from an external anal area of B H that contained a mixture DNA profile. The sexual assault kit obtained from H CP also contained a mixture DNA profile obtained from the cervical swab. This meant that more than one person contributed to those particular DNA profiles. The DNA profile of K only had a single profile.

[13] In H B evidence kit, who is the subject matter of this appeal, she found three characteristics, which was an indication that the DNA profile had more than one donor.

[14] It is imperative that we should confine ourselves to the findings relating to H B only, the complainant in this matter.

[15] She found that the DNA profile in the sample marked Nkwanyana can be read into the mixture profile obtained from the external anal swab marked H B. The statistical analysis showed that it was one in 1.2 million people.

[16] F G's profile received under Cas 74/02/2011 under serial number 07 was excluded from the mixture obtained from the external anal swab marked H B. According to her, this conclusively proved that the appellant had been in contact with the complainant as semen was found on the external anal swab taken from the complainant. Her evidence was that the sample taken from the appellant could not have been contaminated.

[17] It is our view that the only inference that ought to be drawn is that the appellant had sexual intercourse with the victim in line with *R v Blom.*[4] This is evidence in a material respect if one looks at the entire facts of the trial. The appellant did not proffer any explanation to the court why his DNA was found in the mixture obtained from the anal swab of the complainant. In most cases where sexual assault victims are killed, the DNA absolves or convicts the suspects in those cases. The court rejects that it is not fool proof science, unless evidence to the contrary is shown to court.

[18] The nature of the circumstantial evidence presented in the court *a quo* is in the form of DNA evidence. In PJ Schwikkard & SE Van Der Merwe *Principles of Evidence* 4 ed at page 429. 'DNA finger printing' is described as a far more precise method of identification. They refer to a definition in section 36A (1) in chapter 3 of the Criminal Procedure Act. They state that human beings have 46 chromosomes in the nucleus of each somatic or body cell. These thread like structures are composed of linear arrangement of genes which in turn are made up of DNA (deoxyribonucleic acid). The DNA of each individual is unique, except for identical twins. A person's DNA resembles that of his or her parents because one member of each of the 23

[4] 1939 AD 188

chromosomes pairs comes from the mother and one form the father. DNA can be extracted from cells taken from skin, bone, blood, hair follicles, and semen. This DNA can then be used in laboratory tests to show a distinctive pattern of bands. This process is known as DNA finger printing. The pattern that is revealed can then be compared to determine if there is a match. The testing process has to be executed and recorded with such care that it can later be verified by an objective scientist and a court of law.[5]

[19] In the *Bokolo v The State*[6] judgment, relied upon by counsel for the appellant, states as follows:

> '[20] If the STR profile of an accused person in fact differs from the profile retrieved from the sample taken at the scene, even in respect of only one allele, the accused person must be excluded as a source of the crime scene DNA. However, the converse is not true. Because only a limited number of STR loci are analysed, an STR profile cannot identify a person. Therefore the weight to be attached to evidence of an STR profile match or inclusion in the first place depends on the probability of such a match or inclusion occuring in a particular population. Without such evidence the STR profile match or inclusion means no more than that the accused person cannot be excluded as a source of the crime scene DNA.
>
> [21] If the profile in question may be found in many individuals, a match between the profile of the accused person and the crime scene DNA will have little or no probative value. This is of particular importance where the crime scene DNA is a mixture, which increases the likelihood that the profiles of other members of the population can be read into the mixture. On the other hand an extremely rare profile will strongly point to the involvement of the accused person. This essential component of DNA evidence is usually presented in the form of statistical analyses of a population database. This is a complex topic that does not in this case require further elaboration than the following general remarks.'

[5] *S v Maqhina* 2001 (1) SACR 241 (T)
[6] *Bokolo v S* (483/12) [2013] ZASCA 115 (18 September 2013)

[20] The *Bokolo* judgment underscores the fact that it is not enough for experts opining on their interpretation of DNA evidence to merely reiterate the validity of science behind DNA evidence. If there is an alternative interpretation it must be brought to attention of the court, so that the court can weigh the probative value of the DNA evidence before it. DNA evidence on its own may not be sufficient to establish the guilt of the accused, it has to be weighed against all evidence presented before the court. In this case the witness Ms Thomas was not cross-examined. This could be due to the complexity of the nature of the DNA evidence, but this court has observed that the appellant opted to remain silent and did not challenge the DNA evidence or any other evidence presented by the other state witnesses.

[21] The significance of the *Bokolo* judgment is that the collection, preservation and handling of the DNA material are very important. This takes us to consider the chain evidence as it appears on the record, which is also challenged by the appellant. It must be stressed that it was not challenged in the course of the trial.

[22] I am further assisted by the analysis of the *Bokolo* judgment as it is given by Nicci Whitear-Nel from the School of Law Pietermaritzburg[7], where the following analysis state as follows:

> 'The probative value of DNA profiling in any particular case will depend on a number of different factors which must be assessed in the context of the facts of that case. Firstly, an important factor will be whether the samples were properly taken so that they were not contaminated or otherwise compromised. Also, the samples must be shown not to have been tampered with before they were tested in the laboratory. This is known as the chain of custody. Secondly, the equipment used to produce the DNA profile through the processes explained above must be shown to have been working properly. Thirdly, the electropherogram must have been properly analysed and interpreted based on logical and cogent reasoning. Fourthly, the probability of

[7] Taken from the General DNA profiling in e-matshi – electronic publication April 2014

the profile match occurring in the particular relevant population must be considered. This is because STR profiling does not conclusively identify an individual because only 9 loci plus gender are analysed. If the profile which has been revealed on the electropherogram potentially matches many people within the population to which the tested individual belongs, the probative value of the evidence is low.'

[23] Dr Grant who examined the complainant testified that he examined the complainant. He completed a separate form which forms part of the evidence kit indicating where the swabs were taken from. He signed the J88 and the form and handed the kits in respect of the complainant to Constable FP Mbatha, who signed for it. On the second document, the evidence collection document reflects the names of the complainant, the time of the examination, the date and her identity number. It is also recorded that the doctor took swabs from the labia, at the entrance to the vagina, inside the cervix area and around the anal area. His evidence was that the swabs were taken when she had not urinated or bathed since the sexual assault upon her. One can accept that the swabs were not contaminated by detergent or soap or diluted by urine. Prior to the swabs being handed over to Constable FP Mbatha they were sealed in the presence of the police officer, put in a container and labelled under no 08D1AB4958TT – Exhibit "C". J88 Exhibit "B".

[24] The doctors' evidence was confirmed by Constable FP Mbatha, who was at the time of giving evidence married and known as Mlando. She confirmed receiving the kit reference number 08D1AB4958XX. Her evidence is that when she returned to the police station the SAP13 register was not available and she was about to knock off from duty, she handed over the evidence kits to Constable Dudu Khoza so that she can make the necessary entries in the register.

[25] This was confirmed by Constable Dudu Khoza whose evidence was that she made the following entries:

(a) SAP13 292/2011 serial number 09D1AA7090XX; and

(b) B SAP13 293/2011 – exhibit no 08D1AB4958XX.

Having made those entries, Khoza handed the exhibits to her senior, Warrant Officer Ntanzi, for safe keeping in the safe.

[26] Warrant Officer Sibusiso Ntanzi confirmed receiving the two crime kits from Constable Dudu Khoza, exhibits 292 and 293. He kept the kits in the Community Service Centre safe until he handed them over to Detective Constable Rooi on 28 April 2011 sealed as he had received them.

[27] Detective Constable Pretty Rooi who is the Investigating Officer in this case confirmed receipt of the aforementioned exhibits on 28 April 2011, from Warrant Officer Ntanzi. Her evidence is that they were sealed and were kept under lock and key in her steel cabinet up to the time that she handed them to Constable Gumbi on 3 June 2011, still sealed and intact to take them to Forensic Laboratory in Pretoria. Her evidence was also that on 2 June 2011 she took the appellant to Dr Panday for drawing of a sample of blood, which was under kit reference number 07D4AA0413XX. It was also locked in her steel cabinet until 3 June 2011 when she placed it in the forensic bag no FSE555538 locked it again in the steel cabinet. On 6 February 2012 it was taken to Pretoria by Detective Constable Mandlenkosi Gumbi.

[28] Dr Panday a district surgeon confirmed that on 2 June 2016 that she drew a sample of blood from the appellant and completed and signed the evidence kit under number 07D4AA0413. The appellant had signed the form too, which indicated his date of birth and names. The kit was handed over to Warrant Officer Rooi.

[29] Detective Constable Mandlenkosi Gumbi confirmed that on 3 June 2011 he received two packs of exhibit bags given to him by Warrant Officer Rooi and under seal no FSE555548. He took them on the same day to Pretoria. A receipt dated 3 June 2011 confirming such a delivery was handed in at court as Exhibit “E” and “F”.

On 15 February 2012 he received another exhibit FSE555538, which he also delivered to the Forensic Laboratory in Pretoria. The receipt dated 16 February 2012 was handed in as Exhibit “G”.

[30] Ms Thomas’ findings were handed in as Exhibit “A”, which contained her affidavit in terms of section 212 of the Criminal Procedure Act. In paragraph 5 of her affidavit she states that the case files and their contents were in her safekeeping for the duration of the investigation, from date of receipt until completion. One can safely conclude that there was no tampering with this evidence. To her 212 affidavit an appendix is attached, which describes the system used by the Forensic Laboratories in South Africa. At the last paragraph of that appendix it is stated that the equipment used during DNA analyses are calibrated officially on a regular basis. Time and temperature are the measurement parameters on this apparatus and can be traced to National standards. This equipment is serviced as suggested by the manufacturer and the accurate functioning thereof is regularly tested.

[31] The burden of proof in our criminal legal system lies with the state, to prove its case beyond a reasonable doubt, as Madala J said in *Osman and another v Attorney-General Transvaal*:[8]

> ‘Our legal system is an adversarial one. Once the prosecution has produced evidence sufficient to establish a prima facie case, an accused who fails to produce evidence to rebut that case is at risk. The failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt. An accused, however, always runs the risk that absent any rebuttal, the prosecution’s case may be sufficient to prove the elements of the offence. The fact that an accused has to make such an election is not a breach of the right to silence. If the right to silence were to be so interpreted, it would destroy the fundamental nature of our adversarial system of criminal justice.’

[8] 1998 (4) SA 1224 (CC)

[32] It must also be borne in mind that even where the accused reserves the right to remain silent, and does not give evidence in his trial, in the event that the state fails to prove a case against him due to lack of credible evidence, he may be acquitted.

[33] The appellant was in the same position in this case. He did not disclose the basis of his defence, the evidence given by the state witnesses was not challenged through cross-examination, save for one witness, his defence was not put to any witnesses and he did not give evidence in his case. A person who has an opportunity to cross-examine a witness, and does not do so, is taken to have elected not to dispute the evidence of the witness.

[34] In the court a quo the complainant was not able to identify her assailants nor was her brother who was also a victim of the same robbery. In the light thereof, there was no other evidence before the court, save the DNA evidence that linked the appellant to the crimes that he was convicted of. This evidence is circumstantial in its nature, but, given the statistical analysis, overwhelming if there is no evidence before the court to show that there is room for a reasonable inference other than the appellant's guilt.

[35] In *R v Blom*[9] the court held that in reasoning by inference in a criminal case there are two cardinal rules of logic which cannot be ignored. The first rule is that the inference sought to be drawn must be consistent with all the proved facts: if it is not, the inference cannot be drawn. The second rule is that the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn: if these proved facts do not exclude all other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.

[9]1939 AD 188 page 202-203
[10] *S v Brown en 'n Ander* 1996 (2) SACR 49 (NC)

[36] In line with the accused's constitutional right to silence, his guilt cannot be inferred merely from his silence. The court is called upon to decide whether the uncontradicted *prima facie* case of the prosecution must harden into proof beyond a reasonable doubt.[10] The accused's right to silence cannot prevent logical inferences being drawn. This view was confirmed by the Supreme Court of Appeal in *S v Tandwa and Others,*[11] where it was said that although silence was the constitutional entitlement of the accused:

> 'his exercise of the right does not suspend the operation of ordinary rational processes.'

[37] The appellant has not given explanation as to why his DNA was found on the swab taken from the anal area of the complainant. The swab was taken from the residue of semen as stated by Dr Grant. The appellant had to give an explanation for this and he failed to do so.

[38] It is therefore our view that the state had proved its case beyond a reasonable doubt, and the appeal against conviction must fail.

AD SENTENCE

[39] The appellant also appeals his sentence of life imprisonment imposed on the rape conviction. The relevant legislation[12] reads as follows:

> '51 (1) Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.'

The relevant portion of Schedule 2 part 1 states:

[10] *S v Brown en 'n Ander* 1996 (2) SACR 49 (NC)
[11] *S v Tandwa and others* 2008 (1) SACR 613 (SCA) at 531
[12] Section 51(1) of Act 105 of 1997

> ‘Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-
> *(a)* when committed-
> (i) in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice;
> (ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;’

[40] The appellant attacks the judgment on sentence firstly on the basis that there was no evidence that the complainant was 15 years old at the date of the commission of the crimes, therefore it cannot be said that the crime of rape fell under Part 1 of Schedule 2 of the Criminal Law Amendment Act,[13] which prescribes life imprisonment for such a crime. Secondly, on the basis that the appellant, was charged with one (1) count of rape, relating to him raping the complainant once. In amplification thereof, it is argued that there was no charge and no evidence that the appellant was complicit to and criminally liable for the rapes by his companions. Furthermore, it is submitted that there is no evidence that the appellant’s companions were charged of and convicted for a rape wherein they were accomplices to the appellant.

[41] The court *a quo* accepted that the complainant was below the age of 16 years when she was raped. However, at the time when she gave evidence in the trial she was 19 years old. This has created doubt as to her exact age when she was sexually assaulted. In the absence of the birth certificate it can be accepted that it cannot be conclusively proved whether she was 15 years or older, when she was sexually assaulted.

[42] The charge sheet does not state the number of times that the complainant was raped, save that it states that she was gang raped. It is clear from the language used in the charge sheet, that she was gang raped. The proof thereof is a matter for evidence. It is our view that gang rape was proved. As it is confirmed through the

[13] Act 105 of 1997

presence of the swabs examined and analysed by the expert witness as well as the unchallenged evidence of the complainant. The relevant provisions of the Act which I have referred to above do not refer to age as a relevant factor in respect of the crime that the appellant was convicted for.

[43] Counsel for the appellant also submits that the court *a* quo failed to take into account the personal circumstances of the appellant in that at the time of commission of the offences he was 21 years old, he is a first offender, he passed grade 10 in 2003, was employed as a painter on a temporary basis, earning R150.00 per day, he was on treatment for tuberculosis and he was kept in custody after his bail was cancelled from 4 February 2014 to 24 November 2014. It was also brought to the attention of the court that the appellant has no children, is unmarried and lives with his grandmother, as his mother lives at Mtubatuba. His father passed away in 1998.

[44] It is common cause that the appellant was not convicted of only rape but also of two counts of robbery with aggravating circumstances. A knife was used in the commission of the offences.

[45] The complainant in the rape charge was raped four times by the appellant and his co-perpetrators. She was raped by persons who did not use a condom, putting her at risk of contracting sexual transmitted deceases. She was raped in the sanctuary of her home and in the presence of her siblings who were also subjected to the robberies. The complainant after being raped in her room, was pulled outside by the perpetrators with the intention of taking her away with them. She was merely saved by the appearance of a neighbour.

[46] The court *a quo* in imposing a life sentence and the prescribed sentences for robbery with aggravating circumstances found no substantial and compelling circumstances. It is a principle of our law that a life sentence must not be imposed

lightly. The leading case that serves as a guideline in the application of the minimum sentence legislation is *S v Malgas*[14] in which the Supreme Court of Appeal stated that the prescribed sentence should be imposed and that the sentencing court should not deviate from the prescribed sentences for flimsy reasons. This view was confirmed in *Matyityi*[15] and *S v PB*.[16]

[47] In determining substantial and compelling circumstances, the sentencing Court is required to give due regard to those factors traditionally considered to be mitigating and aggravating circumstances. In *S v M*[17] it was held that:

> 'The Courts are required to approach the imposition of sentence conscious that the Legislature has ordered life imprisonment (or the particulars prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weight justification be imposed for the listed crimes in the specified circumstances.'
>
> 'In determining the presence or absence of substantial and compelling circumstances, the sentencing Court is required to give due regard to those facts traditionally, considered as 'mitigating' and aggravating.'

[48] The courts also consider if there are aggravating circumstances. Aggravating factors are those which refer to circumstances which relate to the commission of the crime, amongst others, the use of force or threats, gang rape, assault on the victim, physical injuries, exposure to HIV, vulnerability of the victim, absence of cruelty, premeditation, harm to the victim, whether it is someone who is known to the victim or someone they live with in the same locality and other relevant factors.

[49] A very important consideration is the proportionality test. A Court is obliged even in the absence of substantial and compelling circumstances, to consider this

[14] 2001 (1) SACR 469 (SCA)
[15] 2010 SACR 127 (SCA)
[16] 2011 (1) SACR 1 (SCA) para 21
[17] 2007 (2) SACR 60 (W)

test during the second enquiry. The judgment of Nugent JA in *S v Vilakazi*[18] at paragraph 15 is pertinent in this regards:

> 'It is clear from the terms in which the test was framed in Malgas and endorsed in Dodo that it is incumbent upon a Court in every case, before it imposes a prescribed sentence, to assess upon consideration of all circumstances of a particular case, whether the prescribed sentence is indeed proportionate to the particular offence.'

[50] The State in its submission submitted that the Appellant had not shown any remorse. This factor is also taken into account when a Court has to decide whether the accused can be rehabilitated and returned back to the society. You can only rehabilitate a person who acknowledges that he has done wrong and is remorseful. In *S v Seegers*,[19] the Court had this to say:

> 'It is unlikely that a truly remorseful offender will re-offend in the future.'

[51] The Supreme Court of Appeal in various judgments has previously held that it is only for rapes of the worst type, that life imprisonment will be justified, for example; in *S v Abrahams*,[20] *S v Mahomotsa*[21] and the more recent *Mudau v S*[22]. However, in *S v Vilakazi*[23] a different view was held in that life imprisonment is not reserved only for extreme cases, as long as it is proportionate to the offence.

[52] In applying the proportionally test I have also considered the provisions of Section 51(3)(aA) of the Criminal Law Amendment Act[24] which sets out four (4) factors which will not count as substantial and compelling circumstances, being the complainant's previous sexual history, the apparent lack of physical injury to the complainant; the accused's persons cultural or religious beliefs about rape and any relationship between the accused person and the complainant prior to the offence

[18] 2009 (1) SACR 552 (SCA)
[19] 1970 (2) SA 506
[20] 2002 (1) SACR 116 (SCA)
[21] 2002 (2) SACR 435 (SCA)
[22] 764/12 SACR 292 (SCA) delivered on 9 May 2013
[23] 2009 (1) SACR 552 (SCA)
[24] Act105 of 1997

being committed. In this case the fact that the victim lack extensive physical injuries cannot be accepted as a factor for consideration in reducing the sentence imposed on the appellant.

[53] The courts should not only look at physical injuries, courts should not ignore the profound psychological trauma, loss of dignity and emotional scars suffered by the victims of rape. The victim was traumatized to such an extent that even at the trial stage the learned magistrate observed that she was shivering and upon enquiry learnt that she was scared. No victim impact report on the complainant was handed in and we cannot judge the extent of the psychological trauma that she suffered. But we can take judicial notice that rape has a profound effect on the life of a victim.

[54] The courts in imposing the prescribed minimum sentences must consider, even in the absence of substantial and compelling circumstances, if the sentence is proportionate to the crime. It is our view that in this matter the sentence of life imprisonment is proportionate to the crime committed.

[55] Accordingly, the appeal on sentence fails.

[56] The following order is made:

“The appeal against both conviction and sentence fails.”

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MBATHA J

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OLSEN J

Date of Hearing:	13 September 2016
Date of Judgment:	27 September 2016

Appearances

Counsel for the Appellant:	Adv SB Mngadi
Instructed by:	Pietermaritzburg Justice Centre
Counsel for the Respondent:	Adv ES Magwaza
Instructed by:	The Director of Public Prosecutions Pietermaritzburg