

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

SS68/2006

5 DATE:

11 OCTOBER 2006

In the matter between:

THE STATE

and

10 **THEMBALANI DOTWANA**

S E N T E N C E

15 **HLOPHE, JP:**

Mr Dotwana for purposes of sentence, I am going to treat all four counts as one. Not so long ago I confirmed that you were convicted properly by the lower courts and now we are reaching a stage when I have to decide on an appropriate sentence to be meted out to you.

Let me tell you what goes through the mind of any judicial officer when he has to sentence. There are three factors that are normally taken into account, it is the crime, the criminal

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and the interest of the community. Let us deal with crime, rape, and in your case it is two counts of rape, is a very serious crime which involves the invasion of a woman's privacy. What makes it even worse in your case is the fact
5 that you abused the relationship of trust, the complainant is your stepdaughter. At the time when these crimes were committed, you were living together and you are still married to the mother of the complainant.

10 If we turn to the interest of the criminal, I am not going to rehash that, because it has already been captured electronically when you gave evidence earlier today. I do want to say even though you were convicted of theft in 1992 and you were sentenced accordingly, I am going to disregard that
15 in its entirety for purposes of today. It is an irrelevant previous conviction completely. A further reason for disregarding it, is because it occurred in 1992, it is more than ten years old. I have no intention to rehash the evidence that you led, except to say that for all practical purposes I am going to treat you as
20 a first offender.

Turning to the third factor, the need to protect the interest of the community. That is a very important factor, because crimes of this nature, rape, particularly in the Western Cape,
25 are on the rise. More and more every day our courts are

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flooded because of rape cases. I have no doubt that women, and particularly young children, are the most vulnerable groups in our communities and there is no doubt to my mind that they are looking up to these courts for protection against
5 people who commit crimes of this nature.

The kind of sentence that I will impose, will also give you an opportunity to rehabilitate, regard being had to your age, of course, you are now 35 years old. The law is very simple in
10 this regard. An accused person who has been found guilty of rape of this magnitude, must be sentenced to life, unless there are compelling and substantial factors dictating otherwise. I have no intention to sentence you to life imprisonment, Mr Dotwana. In my judgment, indeed there are substantial and
15 compelling factors which dictate otherwise. Cumulatively speaking, within the authority S v Malgas, the fact that, number 1, you have been in prison for almost a year now and, of course, the fact that you are a first offender. These factors, in my judgment, are such that they dictate that I should not
20 impose life sentence on you.

That, however, does not mean that I am not going to sentence you. I have taken account of the evidence led by your wife earlier regarding the financial hardship that they have
25 experienced since your incarceration about a year ago. I have

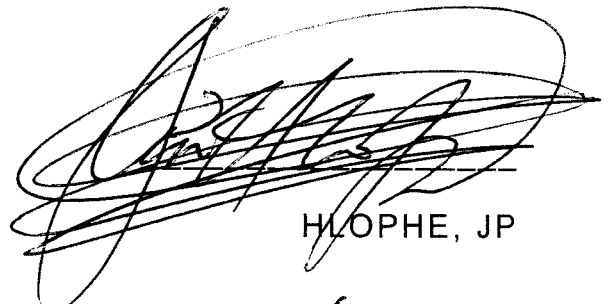
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taken that into account. However, as Ms Greyling, who appeared for the state, highlighted, it would be a sad day if criminals were to walk free purely on the basis that should they be imprisoned, their next of kin would suffer. If anything,
5 there is a real risk that if that approach were to be followed, the citizens would be encouraged thereby to take the law into their hands, and that we can ill afford as a young democracy.

I have taken all other factors into account that need to be
10 taken into account for purposes of deciding on an appropriate sentence. Having taken all other factors that need to be taken into account, I am satisfied that a period of direct imprisonment is indeed called for, particularly in the light of the seriousness of the crimes of which you have been
15 convicted. I am satisfied that a period of 18 years direct imprisonment is the sentence that must be imposed on you. Accordingly **YOU ARE SENTENCED TO 18 (EIGHTEEN) YEARS DIRECT IMPRISONMENT.**

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HLOPHE, JP
28/11/2011