

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

CASE NUMBER:

SS64/2007

5 **DATE:**

7 NOVEMBER 2007

In the matter between

THE STATE

and

10 **JONATHAN WILLEMSE**

SENTENCE

HLOPHE, JP:

15 Mr Willemse yesterday this court unanimously convicted you
on four counts. The first three were indecent assault and the
last count which was Count 4 was rape. At the end of
yesterday's proceedings the court was addressed by Miss Allie
who appears for the state as well as your Advocate, Mr
20 Buntting.

As far as Miss Allie's address was concerned she firstly
handed up what was later marked Exhibit D, this being the
record of your previous convictions. This record of previous
25 convictions, SAP69 was marked Exhibit D and it is clear there

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/...

from that you have two relevant previous convictions for assault GBH. One of the things as you will soon find out, one of the things of factors which any court will take into account for purposes of deciding on an appropriate sentence would
5 obviously be the personal interest of the accused person.

Once we are still busy with your personal circumstances it is important to highlight that you are by no means a first offender. I will take that into account for purposes of sen-
10 tence. Also relevant with regard to your personal circumstances is obviously the fact that you have minor dependants, children who are still dependant on you as minors. Also your age, the fact that you are now about 46 or 47. I think also important in this regard is the fact that you have been behind
15 bars since 16 April 2006 for a period of about eighteen months now.

A number of other factors were outlined by Mr Buntting in the course of his address. In addition of course to taking into
20 account the accused personal circumstances the court looks at the crime as the second factor. Here you have been found guilty on four counts, the first three relating to indecent assault and the last one, count number 4 which is rape, is a very serious count or charge.

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What makes the forth count even more serious is the fact that the complainant in this case was just nine years old at the time of these incidents. Even more so it is also serious, what makes it even more serious as well in addition to that is the fact that, it is because of the relationship that existed between yourself, Mr Willemse and the complainant, Nicole Titus. You were a Stepfather to her. At all material times she regarded you or treated you as a father and therefore you abused the relationship of trust which existed between the father and the child.

For example on the day when the child was raped by yourself in Wellington, the child would have felt quite comfortable in accompanying you for shopping purposes, because she regarded you not as a stranger, but as her father. I regard such an abuse of the relationship of trust in a very serious light.

The third factor which any court would take into account for purposes of sentencing is the need to protect the interest of the community. Rape is a serious matter and I have no doubt that parliament in its wisdom, when it enacted the minimum sentence legislation was responding to the endemic crime of rape in our societies, communities. Sadly, rape, particularly of young children within their families is becoming a serious

problem in our communities and clearly in this case it also had an impact on Nicole Titus.

It emerged in cross-examination for example that she failed
5 grade four last year and she had to change schools and she is now repeating the same grade at another school. There is no doubt in my mind that Nicole Titus was traumatised by the incident. It may well be that of course she will soon outgrow the trauma, but the fact of the matter remains that she was
10 traumatised by this unwarranted incident. She was a young girl and what a way to deprive her of her virginity. The incident I have no doubt destroyed her virginity and it destroyed her as a woman.

15 The law is very clear Mr Willemse, once an accused person has been found guilty of raping a child under the age of 16, that person must be sentenced to life imprisonment. The court has no discretion, it can only deviate from the sentence of life imprisonment if it finds that there were substantial and
20 compelling factors dictating otherwise.

Both council, that is your defence council, Mr Buntting as well as the state Advocate, the state council Miss Allie, were *ad idem* that this is not the kind of a case which calls for life
25 imprisonment. I agree with the submissions made by the
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learned council in this regard. I find therefore on the authority of S v Malgas that indeed there are substantial and compelling factors which dictate to me that I should not impose life sentence in this case.

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This is largely because of the cumulative effect of your personal circumstances, namely your age, you are now about 47 years, you have been in custody for a period of just over 18 months, to be more precise, he has been in custody since 16
10 April 2006, the date when he was arrested. Also your family upbringing, the fact that you have no formal schooling and the fact that you are from a dysfunctional family, it is a combination of these factors, if you look at them cumulatively which leads to the conclusion that life imprisonment would be
15 totally inappropriate in this particular case.

Nevertheless you have a bad criminal record, this is not your first time to appear in court. Apart from, obviously there are other convictions which are not relevant, but for purposes of
20 these proceedings you have two relevant previous convictions for assault GBH. Rape is a crime of violence, so clearly the two previous convictions for assault GBH are directly relevant.

Mr Willemse, can I warn you, you are still in court and you are
25 being sentenced by me. I just want to warn you in very strong

terms, and this is not the first time you do this in court, you did it as well a couple of days, I want to warn you for the last time. Let me carry on.

5 I was still saying those two previous convictions are directly relevant in as much as rape is a crime of violence itself. There is no doubt to my mind that the previous relatively short sentences imposed with regard to those two previous convictions for assault GBH have not had the desired effect.

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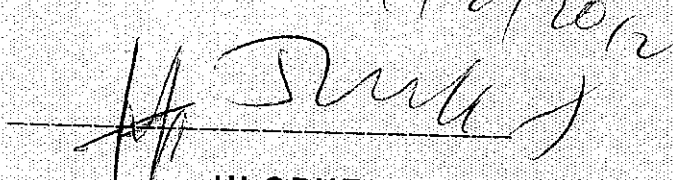
I am convinced therefore that after considering various sentencing options, that a long term jail sentence is called for. The sentence which I have in mind is such that it will send a clear message to people who have a propensity to commit
15 such serious crimes of violence, the message being that these crimes will not be tolerated by our courts. But at the same time the sentence which I have in mind will give you an opportunity to rehabilitate yourself and when you come out of prison, be a better citizen of the country.

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After considering various sentencing options, I am satisfied that the following sentence must be meated out to you:
COUNT 1, THREE YEARS IMPRISONMENT, COUNT 2, THREE YEARS IMPRISONMENT, COUNT 3, THREE YEARS IMPRISONMENT. COUNT FOUR WHICH IS RAPE, 18 YEARS
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IMPRISONMENT. IT IS ORDERED THAT THE SENTENCES
SHALL RUN CONCURRENTLY.

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6/12/2012

HLOPHE, JP