

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

CASE NO:

CC219/07

DATE:

5 May 2008

5 In the matter between:

THE STATE

and

MICHAEL MQWABULO

10

SENTENCE

HLOPHE, JP

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A little while ago I confirmed that you were properly convicted of rape in the Regional Court as charged. The Court in determining what is an appropriate sentence to be imposed upon a convicted accused will take into account a number of factors. These include the crime, that is the nature, the seriousness thereof, and the manner in which the crime was committed.

With regard to the crime rape is obviously a very serious crime, which entails an invasion of the woman's privacy, and in

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this particular case the victim was just 12 years old at the time. Furthermore the complainant was a *bona fide* person in the taxi operated by the accused person. Her whole life was entrusted in the hands of the accused, and the accused person
5 abused that trust relationship that existed.

Furthermore the Court will look into the personal circumstances of the accused person, in this case yourself Mr Mqwabulo. I am aware of your personal circumstances, that
10 you are married, you are a father of seven children, that you are 34 years old and so on and so on, I have no intention to rehash that.

The third factor, which is equally important, is the need to
15 protect the community from people who commit such violent crimes. Rape is so serious and so endemic in our societies that Parliament in its wisdom passed the Minimum Sentence Legislation. According to the Minimum Sentence Legislation an accused person who is convicted of raping a child under the
20 age of 16 years must be sentenced to life. The Court can only deviate from that prescribed compulsory sentence if it comes to the conclusion that there were substantial and compelling factors dictating otherwise.

25 Counsel for the State argued that there was no reason

whatsoever to deviate from the prescribed minimum sentence, which is life imprisonment. A number of reasons were advanced by Mr De Jongh in that regard. Defence counsel argued quite to the contrary. The upshot of his argument was
5 that this Court would be justified in deviating from the prescribed minimum sentence. The authority which is relevant, State v Malgas which is a SCA judgment. According to State v Malgas the Court would be justified in deviating from the prescribed minimum sentence if cumulatively speaking the
10 Court can come to the conclusion that there are substantial and compelling factors.

The crime that the accused committed is a serious one. If one does not impose the prescribed minimum sentence, one should
15 not be construed as suggesting that it is less serious. I do feel however, it is my judgment that the prescribed minimum sentence of life imprisonment would be inappropriate in this particular case for the following reasons. The accused is a first offender, he has not had brushes with the law, even
20 though he did not plead guilty and generally he cooperated with the police and the investigation. Furthermore he has already been in prison for a period of eight months, awaiting to be sentenced today. I think in my judgment if one took all these factors cumulatively the Court would be justified in
25 deviating from the sentence of life imprisonment. That

however does not and cannot mean the accused should not be punished for the crime which he committed.

A number of various sentencing options available to this Court
5 and after considering various sentencing options I am satisfied
that the accused must be sent away for a long time. The kind
of sentence which I have in mind will give the accused person
an opportunity to rehabilitate and be an honourable citizen of
this country. It is such as to give a clear message, to send out
10 a clear message to our societies that crimes of this nature,
violence against women and children, will not be tolerated.

After considering various sentencing options I am satisfied that
there is only one appropriate sentence for you, it is direct
15 imprisonment. You are accordingly sentenced as follows; 20
(TWENTY) YEARS IMPRISONMENT.

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HLOPHE, JP