

IN THE HIGH COURT OF SOUTH AFRICA  
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

A660/2007

DATE:

18 APRIL 2008

5 In the matter between:

CECIL SWARTZ

Appellant

and

THE STATE

Respondent

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J U D G M E N T

(Appeal against Sentence)

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MEER, J:

15 [1] On 8 February 2006 appellant was convicted at the  
Parow Regional Court on two counts of indecent assault  
and he was sentenced to an effective period of seven  
years' direct imprisonment, three years on the first count  
and four years on the second count.

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{2} Appellant, who was legally represented, had pleaded  
guilty. The offences were committed in 2002 and 2005  
respectively on appellant's own daughter who was 13 at  
the time of the first offence and 16 at the time of the  
25 second offence. Appellant himself was in his 30's or

thereabouts. At the time of sentence, appellant was still married to his daughter's mother. He has a younger daughter and son. Appellant appeals against his sentence only with leave of the Court *a quo*.

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[3] The grounds of appeal in essence are that the sentence is shockingly disproportionate, that the magistrate misdirected himself in over-emphasising appellant's three previous convictions for a violation of a family violence interdict, misdirected himself in concluding that long term imprisonment was an appropriate sentence and placed too much emphasis on the interests of society. A further misdirection it is said was not to temper the cumulative effect of the sentences by ordering that they run concurrently.

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[4] Mr Maartens for the respondent submitted that notwithstanding the fact that the cumulative effect of the sentences might appear to be on the heavy side, the protection of innocent children from abuse of this type calls for severe sentences.

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[5] In a well-reasoned judgment for the purpose of sentence the heinous act of a father indecently assaulting his own daughter was aptly commented upon by the magistrate.

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Cognisance was taken of the fact that the offences were committed over four years and that appellant had three previous convictions for violating interdicts against him for family violence and the appellant's family could no longer be traumatised by him. Instead of protecting them he presented a danger to them. The Court found that the appellant had expressed no true remorse. He had also ignored a bail condition preventing him from returning to the family home. In all the circumstances, the Court concluded that a sentence of long term imprisonment had to be imposed. As the two offences were committed years apart, the concurrent operation of sentences was not ordered.

15 [6] Whilst I cannot fault the Court's reasoning, I am of the view that the cumulative effect of the sentence is excessive. Notwithstanding the serious nature of the offences, the cumulative effect of these sentences, in my view, stand to be tempered. In reconsidering the sentences I am in agreement with respondent that the first offence is more serious than the second and the sentences stand to be adjusted to reflect this.

[7] I would on appeal set aside the sentences imposed and substitute them with the following sentences:

Count 1 – the appellant is sentenced to three years' imprisonment

Count 2 – the appellant sentenced to two years' imprisonment.

5 Appellant is accordingly sentenced to a period of five years' effective imprisonment.



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M.E.E.R. J

N C ERASMUS, J.: I agree. It is so ordered.

15 The Registrar of this Court is instructed in case number A660/2007, the matter of Cecil Swartz, having regard to the fact that the appellant was sentenced approximately two and a half years ago, the sentence now being reduced to five years, and in the matter of Severo Hendricks, to forward to the prison authorities the orders of this Court before the end of business today.

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N C ERASMUS, J