

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO:

CC103/2006

DATE:

13 FEBRUARY 2008

5 In the matter of:

THE STATE

versus

THOKOZILE MDOLOMBA

10

S E N T E N C E

HLOPHE, JP:

15 [1] Mr Mdolomba, a little while ago I confirmed that you were
properly convicted on the nine counts in the court *a quo*.
These nine counts were read to the record earlier; it is
six counts of indecent assault, two counts of assault with
intent to do grievous bodily harm and one count of rape.

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[2] It would appear that the victim in the respect of whom the
rape charge and conviction was made was not under the
age of 16, as we originally thought. Any doubt with
regard to the age of the victim must be given to the
25 accused person. The age of the victim is important

because by law rape of a female who is under the age of 16 carries with it a compulsory sentence of life imprisonment.

5 [3] In this case I got the firm impression that counsel for the State, Mr Theron, conceded, quite rightly in my view, that the compulsory sentence of life imprisonment is inapplicable.

10 [4] Your counsel placed a number of personal factors on the record and this Court has no intention of rehashing those factors. I do want to highlight a few of those factors however. The first relates to your age, you are now 49 years old, you are married with eleven children, six of whom live with you and your wife. It is also important
15 that you have been incarcerated since the 11th November 2005, for a period of just over two years now.

[5] Prior to the commission of the offence and the
20 subsequent conviction, you had a relatively stable job as a debt collector and you also had some private business interest as well. According to Exhibit B, being the record of previous convictions which you refused to sign, it is clear that you do have relevant previous convictions.

[6] Mr Theron quite rightly conceded that even though those previous convictions were relevant insofar as they are crimes of violence, nevertheless they are older than ten years and therefore the Court had to discard them. For
5 all practical purposes therefore Mr Mdolomba I will treat you as a first offender for purposes of these proceedings.

[7] The three most important factors which any court will take into account in deciding on an appropriate sentence
10 to be imposed on a convicted person; these are the crime, the interests of the criminal and the need to protect society. Your personal circumstances are already before Court and I do not want to rehash them.

15 [8] Turning to the second aspect, namely the crime, clearly three of the nine crimes of which you have been found guilty are of a serious nature. I am referring to the two counts of assault with intent to grievous bodily harm and rape. What the Court will always take into account is the
20 nature of the crime, the seriousness thereof and the manner in which the crime was committed.

[9] In this case what makes it even more aggravating is the fact that you raped your own biological daughter,
25 something of which you must be ashamed. Rape is a

crime of violence which entails the humiliation of the victim of the crime. Furthermore, the victim was your own biological daughter who was aged about 16 years at the time and you would have been about 33 years old.

5 There was such a huge age disparity between yourselves and I regard the age disparity between yourselves, between yourself as the father and the child, in a rather serious light.

10 [10] Furthermore, the fact that the victim of this crime, you own biological daughter, would have felt very comfortable in your presence and you abused that relationship of trust.

15 [11] The kind of sentence that I have in mind is the kind of sentence which will send a clear message to the community that crimes of this nature will not be tolerated. It is the kind of sentence which will give you an opportunity when you come out of prison one day to
20 rehabilitate and be a better citizen of this country. For purposes of the sentence which I am about to impose on you I will take all nine counts as one.

[12] Accordingly, having considered various sentencing
25 options that are open to this Court, I have come to the

conclusion that direct imprisonment is called for. I will take account of the fact that you have already been in prison for a period of just over two years awaiting to be sentenced today.

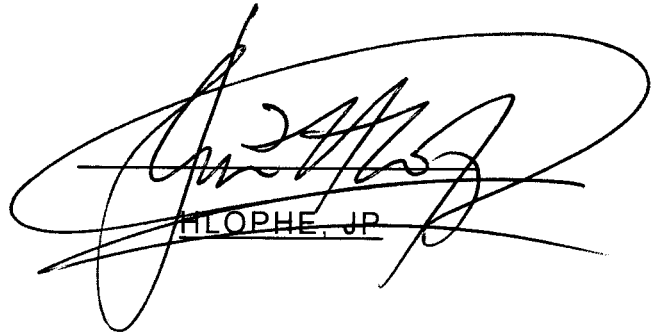
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[13] Accordingly Mr Mdolomba you are sentenced as follows:

Seventeen years' direct imprisonment.

It is ordered that all nine counts shall be taken together as one for purposes of sentencing.

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HLOPHE, JP