

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

CASE NUMBER:

A268/2011

5 **DATE:**

09 September 2011

In the matter between:

MZUKISI WYAKISI

Appellant

and

THE STATE

Respondent

10

J U D G M E N T

BAARTMAN, J:

15 On 29 March 2010, the regional court at Mossel Bay convicted the appellant on one count of rape. On 30 March 2010, that court sentenced the appellant to 18 years direct imprisonment. This is an appeal against that sentence.

20 The circumstances of the offence appear from the record to have been the following:

(a) On the night of the offence, the complainant and two of her friends were on their way home, when
25 the appellant and a 14-year-old youth accosted the

complainant. When one of her friends attempted to stop the appellant and the youth from dragging the complainant off, the appellant assaulted that friend causing her to flee as did the second woman who was in the complainant's party. The appellant and the youth dragged the complainant to nearby bushes where both of them raped her at knifepoint.

(b) The state proffered a charge of rape against the appellant and the youth, both were duly convicted. The trial court sentenced the youth to 5 years direct imprisonment and the appellant to 18 years direct imprisonment.

(c) At the time of his sentence, the appellant was a 32-year-old unmarried father of three minor children. However, at the time of the offence the appellant was 25 years old. He had absconded during the trial and had only been brought to book much later.

(d) The appellant had one previous conviction of robbery for which he had been sentenced to 4 years direct imprisonment.

It is so that the provisions of the Criminal Law Amendment Act

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105 of 1997 (the minimum sentence legislation) were applicable to the offence and that life imprisonment was the applicable prescribed sentence.

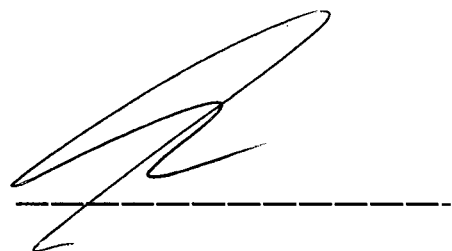
5 The court *a quo*, correctly in my view, found that there were substantial and compelling circumstances that necessitated a deviation from the prescribed minimum sentence. As indicated above the court sentenced the appellant to 18 years direct imprisonment.

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It is so that a court of appeal will not interfere with the discretion of the trial court unless that court had misdirected itself. In this matter, in my view, the trial court did not misdirect itself. In the circumstances of this case, the
15 sentence is also not unjust.

In my view, the appeal against sentence cannot succeed and I propose an order in terms whereof **THIS APPEAL IS DISMISSED.**

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A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a horizontal line and a small flourish.**BAARTMAN, J**

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I agree,

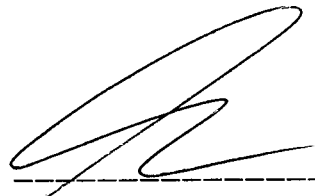
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MANTAME, AJ

It is so ordered.

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BAARTMAN, J