THE REPUBLIC OF SOUTH AFRICA

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

Case No: **A75/2020**

Before the Honourable Mr Justice Henney
and
the Honourable Ms Acting Justice Pangarker
Hearing: 28 May 2021
Judgment delivered: 15 September 2021

In the matter between:

MONWABISI ZINJANJE Appellant

and

THE STATE Respondent

JUDGMENT

PANGARKER AJ (HENNEY J concurring):

Introduction

1. This appeal against sentence emanates from the Regional Court at Wynberg

where the appellant was accused 2 in the matter and was charged along with two co-accused with the following offences: **Count 1** - housebreaking with intent to rob and robbery with aggravating circumstances as intended in section 1 of the Criminal Procedure Act (CPA) 51 of 1977 read with section 51(2)(a) of the Criminal Law Amendment Act (CLAA) 105 of 1997; **Counts 2 and 3** - two counts of contravening section 3 read with sections 1, 55, 56(1), 57, 58, 59, 60, and 61 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007 read with sections 256, 257 and 281 of the CPA and sections 51, 52 and Schedule 2 of the CLA and section 92(2) and 94 of the CPA - rape; **Count 4** - possession of unlicensed firearms; and, **Count 5** - possession of ammunition.

2. In respect of count 1, the court *a quo* convicted the appellant and co-accused of robbery with aggravating circumstances as described in section 1 of the CPA read with section 51(2)(a) and Part 2 of Schedule 2 of the CLAA on the basis that they acted as co-perpetrators. The appellant was convicted of count 2, contravening section 3 of Act 32 of 2007 namely rape, read with the provisions of section 51(1) and Part 1 of Schedule 2 of the CLAA and he was acquitted on counts 3, 4 and 5. The appellant was sentenced as follows:

> Count 1 (robbery with aggravating circumstances) – 12 (twelve) years' imprisonment;
>
> Count 2 (rape) – 15 (fifteen) years' imprisonment

3. The magistrate found that substantial and compelling circumstances existed which warranted a deviation from the minimum sentence in respect of both convictions and the cumulative effect of the sentence is 27 years' imprisonment. She made no order in terms of section 280 (2) of the CPA that the sentences or part thereof, run concurrently with the other. Subsequently, the appellant applied for condonation and leave to appeal both conviction and sentence. The magistrate granted the condonation application and denied leave to appeal against his conviction, with the result that he petitioned the Judge President in terms of section 309C of the CPA and on 16 November 2020, Dolamo and Cloete JJ refused the appellant's application for leave to appeal against his conviction. His appeal against sentence is with the leave of the court *a quo*.

4. The appellant pleaded not guilty to the offences in May 2011 and was legally represented at the time. The proceedings commenced before an acting regional magistrate who noted the plea but no evidence was lead, and in April 2012, the appellant's legal representative withdrew. After more than a year, a new legal representative came on record on a Judicare instruction. In March 2014 the trial commenced before the regional magistrate who acted in terms of section 118 of the CPA. In August 2016 the appellant made various formal admissions in terms of section 220 of the CPA. The State presented the evidence of 14 witnesses in support of the charges against the appellant and his co-accused and 21 exhibits were received during the course of the trial, which was riddled with various delays, mainly on the part of the defense. The evidence was concluded in 2018.

Brief summary of facts and trial proceedings in the court *a quo*

5. I refer to the complainants and victims of the rapes as Mrs C and Mrs K, which is how they are referred to by the respondent's counsel in the heads of argument. On the morning of 23 July 2010, the appellant and his two co-accused made their way to the Wynberg residence of Mrs C and her family. Mrs K was in their employ as the domestic worker. Mrs C left the home shortly after 10h00. Mrs K arrived at approximately 10h30 to start the day's work, and entered the residence by removing the key left for her. Unbeknown to Mrs K, the three men (appellant and two co-accused) had gained access to the residence and were upstairs while she was starting her chores and cleaning downstairs. Mrs K was confronted by the three men who were armed and threatened her. She was taken from room to room, with the appellant and the co-accused ransacking the house and demanding that she shows them where the safe was situated. Mrs K was taken to a room and raped by accused 3.

6. At around lunchtime, Mrs C dropped off the younger children, after collecting them at school and she did not enter the house. She left to collect the older daughter from school. The children were intercepted by the men, hauled into a bathroom with Mrs K and held there, all the while they were waiting for Mrs C's return to the home. During what I shall call the "waiting period' the men continued to move around the house, consuming alcohol belonging to the residents and systematically pursued the ransacking of the house as depicted on the photographs handed in during the trial (exhibit D).

7. Mrs C arrived after lunch and parked her vehicle in the garage. She entered the house intending to use a toilet downstairs, when she was apprehended by the appellant who was armed with what seemed to be a firearm. The older daughter had remained in Mrs C's vehicle in the garage. Mrs C was pushed and threatened by the appellant who removed her cell phone and instructed her to call her daughter to enter the house. She complied, and she and her daughter were hauled upstairs to the bathroom, to join Mrs K and the other children who were traumatised. The men informed her that they were waiting for her arrival, and demanded money, her garage and car keys, which she was forced to handed over. Mrs C was hauled out of the bathroom by the appellant, to a smaller room nearby where he proceeded to rape her, all the while with accused 3 standing by, armed and threatening to ensure that Mrs C was not going to resist. After raping her, the appellant led Mrs C back to the bathroom, to join Mrs K and the children. At some stage whilst in the bathroom, the two women managed convey to each other that they had been raped. The men ordered the women and children to remain in the bathroom for at least another half hour, and they proceeded to load the loot into Mrs C's vehicle and drove off with the stolen items and vehicle.

8. After a while, Mrs C alerted her neighbours and her husband who was at work, and the police were alerted and arrived at the residence. Both women were examined by a medical practitioner on the same day and DNA specimens were taken for purposes of investigating alleged sexual offences (exhibits K and L). The appellant was arrested a few days later being in possession of Mrs C's vehicle and was also linked via his DNA profile found on the specimen taken from Mrs C. During the trial, Mrs K confirmed the

version presented by Mrs C in all material respects of the rape and events which occurred on 23 July 2010.

9. The appellant testified in his own defense, and given that his DNA profile linked him to a vaginal swab taken from Mrs C, his version presented to the magistrate was briefly the following: Mrs C had approached him at a fast food outlet, started a conversation with him, promised to find him a good job and the two had promptly fallen in love and embarked on an illicit sexual relationship. He had met her at her house where they had sexual intercourse and arranged to meet the Friday morning. His co-accused had asked him if they could tag along to Mrs C's house. On 23 July 2010, drove to a nearby parking lot, met Mrs C and all went to her house, where the appellant and Mrs C had sexual intercourse. The appellant then left the house and Mrs C contacted him later to enquire why he had sent men to her house, which he denied doing. She had also informed him that the police advised her and Mrs K to state that they had been raped even though she was not raped.

Grounds of appeal against sentence

10. The appellant assails the sentence imposed by the magistrate on the basis that his effective sentence of 27 years' imprisonment is contrary to what life imprisonment would effectively mean for a person to be released on parole. His submission is that it is clear from the magistrate's judgment that she imposed a sentence less than the prescribed minimum sentence in respect of counts 1 and 3, however, she misdirected herself by imposing the 27 years because it was a sentence which she clearly had not

intended as being the ultimate punishment for the appellant in respect of the two offences. Furthermore, despite the magistrate's desire to impose lesser sentences in respect of the two offences, the cumulative effect exceeded the 25-year parole period for life imprisonment by two years and therefore the ultimate sentence imposed (27 years) is in conflict with the magistrate's intention or desire to impose a lesser sentence.

11. The further ground is that magistrate did not apply section 280(2) of the CPA in circumstances where the two offences (robbery with aggravating circumstances and rape) were closely connected and inextricably linked, and had she done so, she would have achieved the desired imposition of a lesser sentence overall. In failing to apply section 280(2) by ordering that the 15 years and 12 years' imprisonment run concurrently, the magistrate misdirected herself. Additionally, the court *a quo* had ordered that the sentences imposed upon the co-accused number 3 were to run concurrently, but failed to make a similar order in respect of the appellant.

Submissions

12. The appellant's attorney submits that the magistrate was correct in considering the traditional triad and sentencing guidelines in her judgment (see *S v Khumalo 1973 (3) SA 697 (A); S v Zinn 1969 (2) SA 537 (A),* and correctly found that the lengthy period spent in prison during the trial, was a substantial and compelling factor as envisaged in section 51(3)(a) of the CLAA which justified a deviation from the prescribed minimum sentences for the two offences. We have been referred to section 73(6)(b)(iv) of the Correctional Services Act 111 of 1998, which states that a prisoner

sentenced to life imprisonment may not be placed on parole until he has served at least 25 years of his sentence, in support of the submission that the cumulative sentence of 27 years imposed on the appellant, exceeds the 25-year parole period.

13. Furthermore, with reference to *S v Nkosi and Others 2003 1 SACR 91 (SCA),* the attorney's submission is that the magistrate's judgment fell foul of the principle that no sentence of imprisonment should exceed what life imprisonment would effectively mean for a person to be released on parole. It is submitted that despite the magistrate's desire and intention to impose lesser sentences due to substantial and compelling factors found, she nonetheless failed to do so as the cumulative sentence exceeds 25 years. It is submitted that she would have achieved the desired lesser sentence had she ordered the sentences to run concurrently.

14. The respondent's counsel submits that the appellant's argument that the 27 years' imprisonment is harsher than life imprisonment is incorrect, with reference to section 73(6)(v) of the Correctional Services Act, which in summary states that an offender sentenced in terms of the CLAA may not be placed on parole unless he has served at least four fifths of the imprisonment period imposed or 25 years, whichever is the lesser, and the maximum number of years he must serve before being considered for parole is 25 years. With reference to authorities, the respondent submits that the magistrate's sentence was not shockingly inappropriate nor does it induce a sense of shock, and was tempered with mercy. The magistrate considered the appellant's personal circumstances and pre-sentencing report, previous conviction, that he had played a leading role in the commission of the offences, failed to show any remorse for

his actions and had carefully planned the offences. The respondent also submits that the magistrate did not misdirect herself when she did not order the sentences to run concurrently.

Sentencing proceedings

15. The appellant did not testify in mitigation of sentence. His attorney placed his personal circumstances before the court, that he was 37 years old, married and had five minor children, and lived with his wife and children. At the behest of the magistrate, pre-sentencing reports were received as the appellant and accused 3 who were convicted of rape, faced the minimum sentences of life imprisonment. The appellant's report was accepted as exhibit Y and it addressed the appellant's personal circumstances extensively. Apparent from the report, is that the appellant was permanently employed at the time of his arrest as a heavy duty driver, earned a stable salary of R13 000 per month and had purchased a house in Bardale where he lived with his family. He had completed grade 12 at school. His children from previous relationships lived with their mothers and his wife was permanently employed. Significantly, the probation officer reported that the appellant denied his guilt in respect of both offences and did not take responsibility for Mrs C's rape. He has a previous conviction for use of a motor vehicle without the owner's consent, which he admitted.

16. The victim impact report in respect of Mrs C was handed in as exhibit CC. It is evident from the report and record that the mother of four children was severely traumatized by the rape and events which occurred in her home on the day in question.

When informed that an interview with the probation officer was imminent, arrangements had to be made with Mrs C's husband, who prepared the officer on the emotional state and safety of the victim. She was treated by a psychologist and the record reflects that she was emotional and had exceptionally high anxiety levels. The psychologist took some time to calm her down and to prepare Mrs C for the officer's interview with her. Mrs C suffered from an excoriation disorder, or skin picking and it was noted that she had spots on her face and body at the time of the probation officer's interview. All indications were that Mrs C, previously an outgoing, fitness fanatic and housewife, was a shadow of herself; she was scared, withdrawn from the outside world and fearful of strangers. The family immediately moved from the Wynberg house after the incident and only returned to collect their belongings, and no expense was spared by Mr C to ensure the family's safety and security in their new home. The children were enrolled in other schools and the 4 year-relationship between the family and Mrs K, their domestic worker, came to an abrupt end as a result of the crimes perpetrated against both women. I address the magistrate's sentence judgment in the context of the grounds of appeal and evaluation which follow below.

Evaluation

17. The magistrate, in her judgment on conviction, found that there was no evidence to indicate exactly how the appellant and co-accused gained entry into Mrs C's home, and thus she convicted them correctly of robbery with aggravating circumstances. The aggravating circumstance(s) was that the appellant's licensed firearm had been used, and another firearm or weapon resembling one and a knife or knives. In terms of section

51(2)(a) read with Part 2 of Schedule 2 of the CLAA, robbery with aggravating circumstances attracts a minimum sentence of 15 years for a first offender. Rape in terms of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, read with section 51(1) and Part 1 of Schedule 2, has a minimum sentence of life imprisonment.

18. The starting point is to recognize that the magistrate could have imposed the minimum sentences in respect of both counts but did not do so as she was satisfied that substantial and compelling circumstances existed which justified her imposition of lesser sentences on both counts. She found that the appellant's period awaiting trial was the only substantial and compelling factor. In my view, she correctly differentiated the awaiting trial period of the appellant from that of accused 3. The appellant was granted bail of R2000 in late 2011. He was out on bail for a short time, then arrested on another matter and held in custody. In November 2012, the prosecutor applied for cancellation of the appellant's bail in terms of section 68(2) of the CPA, which the magistrate duly granted. The record further reflects that in May 2015, he was granted R2000 bail on appeal (in relation to the bail cancellation order) by the High Court, but once out on bail, was arrested subsequently on another matter. In October 2015, the appellant requested the magistrate to cancel his bail and an order in terms of section 68A was granted for repayment of the bail to the depositor. Thus, the appellant had the benefit of bail in the court *a quo* and was released on bail for very short periods of time, then arrested and kept in custody due to other matters, unlike accused 3 who was in custody since the matter commenced in July 2010.

19. In my view, the first ground of appeal that the cumulative sentence of 27 years' imprisonment is contrary to what life imprisonment would mean for a person to be released on parole, must fail. There is absolutely no indication on record that the magistrate ever considered the question of parole in respect of the sentences she intended imposing, even recognizing that the rape conviction (count 2) attracts life imprisonment. Secondly, the submissions by the appellant are mutually destructive: on the one hand, it is submitted that the appellant's cumulative sentence exceeds the eligibility for parole of a person serving a life sentence (25 years), yet on the other hand, we are reminded that the Supreme Court of Appeal (SCA) has pronounced in various authorities that sentencing courts should not consider the possibility of parole when determining appropriate sentences, and in this regard, it is submitted that the magistrate was correct not to do so when she considered imposing the sentence on the appellant.

20. To illustrate the view held by the SCA, I refer to *S v Matlala 2003 (1) SACR (SCA)* at paragraph 7, where Howie JA stated the following:

> *'Unless there is a particular purpose in having regard to the pre-parole portion of an imprisonment sentence (as, for example, in S v Bull and Another; S v Chavulla and Others 2001 (2) SACR 681 (SCA)) the Court must disregard what might or might not be decided by the administrative authorities as to parole. The court has no control over that. S v S 1987 (2) SA 307 (A) at 313H; S v Mhlakaza and Another 1997 (1) SACR 515 (SCA) at 521d-h. In the latter passage there is the important statement that the function of the sentencing court is to determine the maximum term of imprisonment the convicted person may serve. In other*

words, the court imposes what it intends should be served and it imposes that on an assessment of all the relevant factors before it. It does not grade the duration of its sentences by reference to their conceivable pre-parole components but by reference to the fixed and finite maximum terms it considers appropriate, without any regard to possible parole.' (my emphasis)

In the later judgment of *S v Botha 2006 (2) SACR 110 (SCA)*, the SCA expressed the same sentiments as in *Matlala* at paragraph 25, where it held that:

'One final aspect merits mention. The trial Judge recommended that the appellant serve at least two-thirds of his sentence before being considered for parole. The function of a sentencing court is to determine the term of imprisonment that a person, who has been convicted of an offence, should serve. A court has no control over the minimum period of the sentence that ought to be served by such a person. A recommendation of the kind encountered here is an undesirable incursion into the domain of another arm of State, which is bound to cause tension between the Judiciary and the executive. Courts are not entitled to prescribe to the executive branch of government how long a convicted person should be detained, thereby usurping the function of the executive. (See S v Mhlakaza and Another 1997 (1) SACR 515 (SCA) ([1997] 2 All SA 185) at 521f-i (SACR).)' (my emphasis)

21. As can be seen from the above judgments, it is accepted that a court's function

during the sentencing process is to determine a maximum period for an offender, not a minimum period. In *S v Mokoena 2009 (2) SACR 309 (SCA),* the appellant was sentenced to an effective period of 47 and a half years for murder and robbery with aggravating circumstances. On appeal, the SCA found the sentence for murder (40 years) and the cumulative sentence for the two counts, to be severe. There was no indication that the trial Judge had considered life imprisonment as a suitable sentence, other than the record reflecting his discourse with the prosecutor where it was evident that he considered life imprisonment to be insufficient if parole were to be granted to the appellant (*Mokoena*, paragraph 6). The appeal against sentence succeeded to a limited extent: the SCA replaced the trial court's sentence with an effective period 30 years' of imprisonment.

22. In *S v Mhlakaza and Another 1997 (1) SACR 515 (SCA),* the appellants were sentenced to lengthy terms of imprisonment far in excess of 25 years for several serious charges which involved an armed attack on a police station and shooting and wounding of members of public. The trial court expressed the intention to impose a sentence less than life imprisonment and the SCA had to determine whether, having regard to the cumulative sentences imposed by the trial court, the sentences were proper. Harms JA expressed that:

> *'The net effect of all this is that all sentences of imprisonment imposed by courts are, in a sense, indeterminate sentences. The function of a sentencing court is to determine the maximum term of imprisonment a convicted person may serve. The court has no control over the minimum or actual period served or to be served. A life*

sentence is thus a sentence that may, potentially, amount to imprisonment for the rest of the prisoner' s natural life; and a sentence of 47 years may, potentially, be for the full period. That means that in law a life sentence is potentially (depending upon the life expectancy of the offender) more onerous than one of, say, 47 years'. (at page 521, c-e)

The SCA interfered with the sentences imposed on the basis that the several convictions resulted from the same event, that the lengthy suspended sentences were inappropriate, that there was a disparity between the cumulative sentences imposed on the two appellants and that their personal circumstances were very similar. The SCA thus imposed an effective or cumulative sentence on both appellants of 38 years, with the sentences on certain of the counts to run concurrently. (see also *S v Smith 1996 (1) SACR 250 (E); S v Matolo en 'n Ander 1998 (1) SACR 206 (OPD))*

23. The appellant's attorney relies on *S v Nkosi and Others 2003 (1) SACR 91 (SCA)* in support of the submission on appeal that the 27 years' imprisonment imposed on the appellant is in excess of the 25-year parole period (see sections 73(6)(b)(iv) and (v) of the Correctional Services Act). In *Nkosi*, the offences were committed before the introduction of the Criminal Law Amendment Act, and the sentences were imposed in 2002. The appellants were sentenced to imprisonment of 120 years, 65 years and 45 years respectively. At para 9 of its judgment, the SCA stated:

'Thus, under the law as it presently stands, when what one may call a Methuselah sentence is imposed (ie a sentence in respect of which the prisoner

would require something approximating to the longevity of Methuselah if it is to be served in full) the prisoner will have no chance of being released on the expiry of the sentence and also no chance of being released on parole after serving one half of the sentence. Such a sentence will amount to cruel, inhuman and degrading punishment which is proscribed by s 12(1)(e) of the Constitution of the Republic of South Africa Act 108 of 1996: see Bull's case supra at 696c where it is pointed out that it is the possibility of parole which saves a sentence of life imprisonment from being cruel, inhuman and degrading punishment.'

The SCA held that the sentences imposed by the trial Judge were inappropriate and could not stand as they were intended to interfere with the parole provisions applicable to offenders serving lengthy sentences, and substituted the sentences with life imprisonment.

24. In my view, the sentence imposed by the magistrate cannot be equated with those referred to in *Nkosi*. At the commencement of her judgment on sentence, the magistrate set out the minimum sentence legislation applicable to the charges and while she recognized the minimum sentence of life imprisonment for rape, she set about meticulously and thoroughly addressing the personal circumstances of all the accused (including the appellant), their roles in the offences committed, the interests of society, previous convictions, mitigating and aggravating circumstances, substantial and compelling circumstances and the seriousness of the offences. At no stage did she refer to life imprisonment as the sentence she intended to impose on the appellant in respect

of count 2, and this is because she found his lengthy period of incarceration to be a substantial and compelling factor warranting a departure from the prescribed minimum sentence in respect of the conviction on counts 1 and 2. With respect, I cannot agree that the dictum at paragraph 9 in *Nkosi* is applicable to the magistrate's approach to sentencing in the matter.

25. Furthermore, the magistrate would have acted inappropriately and misdirected herself had she given cognizance to the parole provisions as set out in section 73(6) of the Correctional Services Act when considering the imposition of sentence. She acted correctly and in accordance with the principles espoused in *Mokeona*, *Botha*, *Mhlakaza* and *Mtlala* referred to above by considering and expressing the intention to impose the maximum period of imprisonment, which is the role of the sentencing court. The submission that by imposing a cumulative sentence of 27 years, the magistrate acted contrary to her intention to impose lesser sentences deviating from the prescribed minimum sentences in terms of the CLAA, is rejected. To illustrate, at page 977 of the record, the magistrate states:

> *'As I have stated, I am satisfied that the cumulative effect of different sentences on the different charges, as well as the other factors mentioned all together amount to substantial and compelling circumstances that will justify departure from prescribed minimum sentence by imposing lesser sentences.*
> *The - having regard to all the circumstances, I am satisfied that the following are just and suitable sentences that is proportionate, given all the factors considered'.*

26. The magistrate's judgment is clear and there can be no confusion that she expressed the intention to deviate from the prescribed sentences in respect of both counts of which the appellant was convicted. To the extent necessary, I agree with the respondent's counsel that if the appellant is not released on parole after 25 years, he would be released at the expiry of the 27-year sentence period but I must also add that he may well be placed on parole after serving four fifths of the 27 years, which would be less than 25 years. This decision lies full square within the discretion and authority of Correctional Services and not the sentencing court. In the result, this ground of appeal fails.

27. In my view, the magistrate's failure to apply section 280(2) of the CPA cannot be criticized. Her judgment is detailed and thorough. She took into account all the facts and circumstances of the matter before imposing sentence. I agree with her findings that the robbery was planned and Mrs C's house was carefully targeted, with transport arranged to bring the appellant and his co-accused to Wynberg. The men ransacked the upstairs section of the house prior to accused 3 raping Mrs K, and rather than taking the goods and leaving, they purposely waited and bided their time and all the while helping themselves to alcohol found upstairs. They were unconcerned that their actions could be interrupted anytime, and when the children arrived, they brazenly hauled them and Mrs K into the bathroom, while being armed and continuing to demand money and access to the safe. The appellant's leading role in the commission of the offences cannot be underplayed: he was armed and waiting for Mrs C to arrive, and when she did, he raped her, not heeding her fearful pleas.

28. The evidence in the trial was that the door of the room where Mrs C was raped was open and she was a short distance from the bathroom where her children were guarded. Rather than leave with the family's goods and Mrs C's vehicle, and seemingly because he (and the co-accused) was waiting too long for her arrival, the appellant proceeded to rape her and then left with the stolen items. In my view, the magistrate was correct not to apply section 280(2) of the CPA: some time had passed between the robbery and rape, and to order that the sentences or parts thereof run concurrently, would have diminished the seriousness of a home invasion where the house was ransacked and the women and children terrorized, the rape which occurred in close proximity of minor children and with a co-accused present to possibly inflict harm should Mrs C put up resistance. The magistrate exercised the discretion afforded to her in terms of section 280(2) judicially and with due regard to all the material factors and circumstances of the matter and she cannot be faulted in the circumstances. In the result, this ground of appeal fails.

29. I need not repeat the traumatic effect of the rape on Mrs C and her family, and the violation which occurred in their home which the magistrate recognized was supposed to be a safe haven for the children. The appellant's persistence during the trial on the fabricated version of a consensual sexual relationship with Mrs C prior to the crimes and his failure to show any remorse are clearly aggravating factors considered by the magistrate. The learned magistrate gave due regard to the cumulative effect of the sentence and was correct in her finding regarding substantial and compelling factors justifying a deviation from the prescribed minimum sentence for rape and robbery with aggravating circumstances. In my view, the cumulative 27 years' imprisonment imposed

was not shockingly inappropriate. The rape was an invasion of Mrs C, and not only an invasion of her womanhood and body but an invasion and violation of her dignity and person. She had the right to be and feel safe within her home, to come and go as she pleased, to feel secure in the knowledge that she and the family were protected within the sanctity of their home and familiar environment, yet she suffered the most humiliating, degrading, invasive and repulsive crime at the hands of the appellant who did not spare a thought for his victim. (see *S v Vilakazi 2009 (1) SACR 552 (SCA); S v Chapman 1997 (3) SA 341 (A).* In my view, the interests of society in being protected against the appellant and the seriousness of the offences trump his personal circumstances.

Finding

30. Interference on appeal is justified in the limited circumstances where the magistrate misdirected herself or where the sentence is grossly disproportionate or inappropriate in the circumstances of the matter and the accused (see *S v Matlala 2003 (1) SACR 80 at paragraphs 9 and 10).* In this matter, I find that the magistrate committed no misdirection nor was the sentence disproportionate or inappropriate.

31. In the result, I would make the following order:

The appeal against sentence is dismissed. The sentence of the court *a quo* is confirmed.

M PANGARKER

Acting Judge of the High Court

I agree, and it is so ordered.

R C A HENNEY

Judge of the High Court