Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NO: CA 98/2018

In the matter between:

GEORGE MOLUSI **APPELLANT**

AND

THE STATE **RESPONDENT**

CRIMINAL APPEAL

DJAJE AJP; MASIKE AJ

Heard: 20 JUNE 2024

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **11 JULY 2024**

ORDER

1. The appeal against sentence is dismissed.

JUDGMENT

DJAJE AJP

[1] In this appeal against sentence only the appellant was charged with contravention of section 3 read with sections 1,56(1), 57,58,59,60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, further read with the provisions of section 51 of the Criminal Law Amendment Act 105 of 1997, and further read with the provisions of section 256 and 261 of the Criminal Procedure Act 51 of 1977, in that the appellant unlawfully and intentionally had sexual intercourse with a 14 year old female complainant without her consent. He was sentenced to twenty-five years (25) imprisonment. It is this sentence that he appeals against having been granted leave to appeal by the court *a quo*.

[2] The appellant pleaded not guilty to the charge and his plea explanation was that he did have sexual intercourse with the complainant with her consent. He admitted that the complainant was fourteen (14) years old. At the time of testifying, the complainant was seventeen (17) years old. The complainant testified that it was on **26 March 2009** when the appellant who is her uncle arrived at her home with his girlfriend. The appellant asked the complainant to take them halfway. At that time the complainant was with Ghamogetsi. They all went to town to buy some groceries with the appellant and his girlfriend. The appellant's girlfriend left, and the

appellant was sitting inside the tavern. At around 18h00 the appellant and the complainant walked home and when they reached some bushes, the appellant grabbed the complainant, assaulted her and had sexual intercourse with her without her consent.

[3] After the sexual intercourse, the appellant went to a shop with the complainant and bought her ice cream and a drink. When they arrived at home the complainant reported to her aunt about the sexual intercourse with the appellant. The complainant's aunt testified and confirmed that the complainant did report to her that the appellant had sexual intercourse with her without her consent. The aunt also confirmed that the complainant had injuries on her eye which was caused by the appellant. The police were called, and the appellant was arrested.

[4] The appellant's version was that on the date of the incident he was with the complainant at a tavern. On their way home he had an agreement with the complainant, his niece to have sexual intercourse. They proceeded to the bushes and the complainant undressed herself. They proceeded to have sexual intercourse and thereafter he went to buy her ice cream at the shop. The appellant denied having sexual intercourse with the complainant without her consent. He was aware that the complainant was a minor at the time they had sexual intercourse.

[5] During sentence the court *a quo* found as follows:

"The court is of the opinion that there is nothing placed before this court why this court should deviate from the Minimum Sentence Act that is applicable. Therefore, this court is of the opinion that an appropriate sentence will be 25 (TWENTY-FIVE) years imprisonment..."

[6] In the main the appellant's ground of appeal is that the sentence of twenty-five years imprisonment is excessive and should be replaced with a sentence of ten years imprisonment. It was argued that the appellant was thirty-three years old at the time of the commission of the offence and was a first offender. This made him a candidate for rehabilitation. It was submitted that the court *a quo* failed to consider the appellant's personal circumstances which is a misdirection that entitles this Court to interfere with the sentence imposed.

[7] In contention the respondent submitted that the sentence imposed was appropriate and there is no reason for this Court to interfere.

[8] Sentence is a matter for the discretion of the court burdened with the task of imposing it. A Court of Appeal will be entitled to interfere with the sentence imposed by the trial court if the sentence is disturbingly inappropriate or out of proportion to the seriousness of the offence. **See: S v Romer 2011 (2) SACR 153 (SCA) paragraph 22**

[9] In imposing the appropriate sentence the court should always balance the nature and circumstances of the offence, the personal circumstances of the offender and the impact of the crime on the

community, its welfare and concern. **See: S v Banda and Others 1991(2) SA 352 BGD) at page 355.**

[10] As far as the seriousness of the offence is concerned Nugent JA stated as follows in **S v Vilakazi 2009 (1) SACR 552 (SCA)** paragraph 58:

> *"In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background".*

[11] In the main the appellant argued that the court *a quo* overemphasised the interest of the society and imposed an inappropriate sentence. The appellant in this matter had sexual intercourse with a minor of thirteen (14) years old. It is clear form the facts of the matter that the complainant trusted the appellant. She agreed to go with him to a tavern even though as a minor of 14 years she was not supposed to have been there. It was also highly irresponsible of the appellant to allow the complainant to be with him at a tavern. He took advantage of her when he was in a position of trust. This is an offence where the legislature has prescribed a minimum sentence of life imprisonment. The court *a quo* in sentencing the appellant found that there were no substantial and compelling circumstances but then imposed a sentence of twenty-five years imprisonment. It is not clear why the court *a quo* having found no substantial and compelling circumstances, imposed a lesser sentence. However, in my view, this sentence imposed is appropriate and need not be interfered with.

[12] Looking at the facts of this case, the personal circumstances of the appellant, the mitigating and aggravating features, as well as the submissions by both counsel, the sentence imposed by the court *a quo* is not severe and excessive, but appropriate under the circumstances of this case. The appellant's action was repulsive and abhorrent as he took advantage of a young child who was vulnerable. The argument raised on behalf of the appellant that the sentence of ten (10) years imprisonment should be imposed is without merit and stands to be rejected. In the result the appeal must fail.

Order

[13] Consequently, the following order is made:

2. The appeal against sentence is dismissed.

J T DJAJE

ACTING JUDGE PRESIDENT

NORTH WEST DIVISION; MAHIKENG

I agree

[redacted]

T MASIKE

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION; MAHIKENG

APPEARANCES

DATE OF HEARING	:	**20 JUNE 2024**
DATE OF JUDGMENT	:	**11 JUNE 2024**
COUNSEL FOR THE APPELLANT	:	
COUNSEL FOR THE RESPONDENT	:	

APPEARANCES

DATE OF HEARING	:	**20 JUNE 2024**
DATE OF JUDGMENT	:	**11 JUNE 2024**
COUNSEL FOR THE APPELLANT	:	**ADV MPHAHLANE**
COUNSEL FOR THE RESPONDENT	:	**ADV MAMPO**