IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: N0

AUGUST 2024
DATE OF JUDGMENT

SIGNATURE

CASE NO. A 290/2023

In the matter between:

WELMARIE WILHELMIAH SMITH APPELLANT

And

THE STATE RESPONDENT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be _ August 2024.

DRAFT JUDGMENT

COLLIS J

APPELLANT'S HEADS OF ARGUMENT[CaseLines 052-1]

INTRODUCTION:

1. The Appellant was arraigned in the Gauteng Division of the High Court on charges of murder and assault with the intention to do grievous bodily harm.

2. The Appellant was accused 2 at the Trial, while the erstwhile accused 1 was her ex-husband and the charges originated from the death of their three-year-old daughter.

3. The Appellant, as well as the erstwhile accused 1, pleaded not guilty to these counts, but on 22 February 2019 she was convicted on both counts, while the erstwhile accused 1 was only convicted on the assault charge.[1]

4. On 29 April 2019 the Appellant was sentenced to life imprisonment for the murder and 25 years' imprisonment for the assault with the intention to do grievous harm. The erstwhile accused 1 was similarly sentenced to 25 years'

[1] See: Record p 327 l 4 – 22.

imprisonment, for the assault.[2] All sentences will run concurrently with any sentence of life imprisonment, by operation of law.[3]

5. The Appellant lodged an Application for Leave to Appeal against her conviction and sentence to the Gauteng Division of the High Court, Pretoria.[4] On 30 May 2019 this Application for Leave to Appeal was dismissed, *in toto* by the Trial Court.[5]

6. It is not known whether the erstwhile accused 1 pursued any Application for Leave to Appeal and such does not appear from the record, provided.

7. Consequently, the Supreme Court of Appeal granted Leave to Appeal to the Full Court of the Gauteng Division on 24 May 2023, per Motlhe JA *et* Kathree-Setiloane AJA, against the sentence only.[6]

8. The Appellant was legally represented in the Court *a quo*.

9. The Appellant gave Legal Aid South Africa a mandate to argue this Appeal on her behalf.

AD MERITS

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[2] See; Record p 363 l 5 – 8.
[3] In terms of section 39 (2) (a) (i) of the Correctional Services Act, 111 of 1998 all sentences are served concurrently with any sentence of life imprisonment.
[4] See: Record p 367 – 370.
[5] See: Record p 394 l 11 – 112.
[6] See: Record p 482 – 483.

10. The charges against the Appellant has its origin in an incident the home she shared with the erstwhile accused 1, her deceased daughter, as well as two other children.

11. This incident occurred on 29 March 2007,[7] but the prosecution only commenced on 19 February 2029.[8] No explanation was forthcoming for the **12-year delay** in prosecuting the Appellant.[9]

12. The Appellant contacted an ambulance when the deceased became unresponsive and when she eventually managed to obtain help the deceased was declared dead by the paramedics.

13. The undertaker, who removed the body, noted injuries to the deceased and alerted the authorities; which resulted in a police investigation.

14. Dr. Pharasi, who conducted the post mortem was no longer available, but his report was introduced into the record in terms of **section 212 (4)** of the **Criminal Procedure Act**, **51 of 1977**. He concluded that the cause of death was "HEAD INJURIES (ASSAULT)". In addition, the report found multiple bruises and cigarette burns on the body of the deceased.

15. Professor Saayman, the Chief Forensic Pathologist testified apropos a report he drafted; after considering the post mortem report and photos of the

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[7] See: Record p 2 l 2.
[8] See: Record p 8 l 1.
[9] See: Record p 388 l 1 – 14.

body of the deceased. Although he criticized the post mortem; which was not optimally performed, in his view, he confirmed extensive external injuries; indicative of abuse. He, moreover, concluded that these injuries were inflicted at different times.

16. The Trial Court accepted that the deceased was severely abused over a period of time.

17. The erstwhile accused 1 denied any involvement, or knowledge, of the circumstances surrounding the condition of the deceased.

18. The Appellant claimed that she was not aware of the injuries to the deceased. She testified regarding an incident where the deceased was hit on the head by a Marmite jar, that accused 1 threw at the deceased. Accused 1 did not deny this incident, but suggested that he accidentally hit the deceased; downplaying the seriousness of the injury. Appellant, moreover testified that the deceased accidentally fell out of the cot, on the morning of her death.

19. The Trial Court accepted the prosecution’s version and rejected the version of the Appellants.

20. There was no direct evidence regarding how the deceased sustained all of her injuries.

21. In the result the conviction was founded in inferences drawn from the fact that the deceased was in the care of the Appellant and her husband (accused 1) and they were responsible for her wellbeing.

22. The Trial Court ruled that, although both accused were complicit in the assault of the deceased; the deceased was in the care of the Appellant when the fatal injury was inflicted and, in the result, she alone was held responsible for the murder.

23. The Appellant does not have Leave to Appeal the conviction and the Trial Court's factual findings has to be accepted for purposes of these submissions.

24. The Appellant will argue that the Trial Court misdirected itself in ruling that no substantial and compelling circumstances existed to justify a deviation from the prescribed sentence of 15 imprisonment.

25. The Appellant will submit that **12-year delay** in prosecuting her, together with the fact that she demonstrated that she turned her life around; as evidenced by her subsequent raising of her remaining children, should have constituted weighty substantial and compelling circumstances, especially considered cumulatively with all other factors, not to impose the minimum sentence of 15 years.

26. The Appellant will, moreover, submit that the exponential increase of the minimum sentence of 15 years' imprisonment, to life imprisonment, was not justified on the facts of the matter.

27. The Appellant will, moreover, contend that the Trial Court misdirected itself in imposing a sentence of 25 years' imprisonment for assault; which is wholly out of proportion with the norm for that offence.

28. The Appellant will, moreover, submit; in the event that this Honourable Court were to substitute a determinate sentence for the sentence of life imprisonment, that at least some of the sentence for the assault should be ordered to be served concurrently with the sentence for murder.[10]

29. In the result the Appellant will submit that this Honourable Court should interfere with the sentence and impose a determinate sentence for the murder and a substantially reduced sentence for the assault.

AD SENTENCE

30. The murder falls within the ambit of **section 51(2)** read with **part II** of **Schedule 2** of **Criminal Law (Sentencing) Amendment Act, Act 105 of 1997 (the Act)** as the Trial Court did not find any of the aggravating features, mentioned in **the Act**, which would elevate the sentence to the more onerous category demanding life imprisonment.[11] The prescribed minimum sentence for this offence would therefore be 15 years'

[10] In terms of section 280 of the Criminal Procedure Act, act 51 of 1977. (the "CPA").

[11] In terms of section 51(1) read with part I of Schedule 2 of the Act.

imprisonment, unless substantial and compelling circumstances were present justifying a deviation from the prescribed sentence.[12]

31. It is trite that all factors relevant to sentencing should be viewed cumulatively to establish whether substantial and compelling circumstances are present.[13]

32.It was held in a long line of decisions of the Supreme Court of Appeal that the Courts are free to depart from the minimum sentence, if the Court's sense of fairness cannot support the minimum sentence; and that a sentence of life imprisonment should be reserved for those cases so devoid of mitigating factors, where the heaviest sentence sanctioned by our law would be justified.[14]

33. In **S v Vilakazi [2009 (1) SACR 552 (SCA) at par 13 – 15 and 18 – 20]** the determinative test apropos substantial and compelling circumstances was confirmed and the various degrees of moral blameworthiness; that may still exist in the factual matrixes of matters that will fall within the ambit of **Part I** of **schedule 2** of **the Act** was considered. The principle was approved that the facts of each separate case should be considered to establish the moral blameworthiness of the perpetrator.[15]

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[12] See: Section 51 (3) (a) of the Act.
[13] See: S v Malgas 2001 (1) SACR 469 (SCA).
[14] See: S v Malgas (supra); S v Nkomo 2007 (2) SACR 198 (SCA); S v Abrahams 2002 (1) SACR 116 (SCA); S v Swart 2004 (2) SACR 370 (SCA); S v Mahomotsa 2002 (2) SACR 435 (SCA).
[15] See also: S v Malgas 2001 (1) SACR 469 (SCA); S v Dodo 2001 (3) SA 382 (CC).

34. The Court, further, finally put to rest the notion that **S v Malgas (*supra*)** requires that the minimum sentence should be applied as a first resort once the offence falls within the ambit **schedule 2**.[16]

35. The minimum sentencing regime provides a statutory guideline and should not be adjusted upwards capriciously. Any increase in the minimum sentence should be, suitably, substantiated on the facts of the matter.

> "[11] In S v Msimango [2017] ZASCA 181; 2018 (1) SACR 276 (SCA) para 24, this court in dealing with the imposition of a sentence beyond the prescribed minimum sentence in terms of the proviso said the following: 'In terms of s 51(2) of the CLAA, the appellant should have been sentenced to a period of not fewer than 15 years' imprisonment in the absence of substantial and compelling circumstances. It is true that the regional magistrate had the power to add a further five years to the minimum sentence of 15 years' imprisonment. However, the increase is not to be done whimsically but on sound legal principle which can withstand scrutiny. This requires any presiding officer who intends to invoke this power to give reasons therefore. Regrettably, the regional magistrate gave no reasons for increasing this sentence with an additional five years. On the evidence as it stands, the increase is not justified.'"[17]

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[16] At par 16.
[17] See: Chonco v The State (1247/2018/) [2019] ZASCA 75 (3 May 2019).

36. The Trial Court highlighted the aggravating factors without conclusively stating why such a significant increase to life imprisonment would be justified.[18]

37. Although the Trial Court quite properly stated that it should guard against emotion clouding the Judgement,[19] the Appellant willl contend that the Trial Court did not heed its own warning and allowed anger to cloud its Judgement.

> “It is equally important to remind ourselves that sentencing should always be considered and passed dispassionately, objectively and upon a careful consideration of all relevant factors. Public sentiment cannot be ignored, but it can never be permitted to displace the careful judgment and fine balancing that are involved in arriving at an appropriate sentence. Courts must therefore always strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, has regard to the nature of the crime and takes account of the interests of society. Sentencing involves a very high degree of responsibility which should be carried out with equanimity. As Corbett JA put it in S v Rabie:
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> 'A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to

[18] See: Record p 362 l 22 – 25.
[19] See: Record p 361 l 5 – 7; Record p 363 l 1 – 4.

misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.'[20]

(Own underlining)

38. Considering the submissions, *infra*, regarding the sentence for the assault count, the Appellant will argue that those submissions will serve to reinforce the submissions in this regard.

39. The Appellant will submit that considering the contentions apropos substantial and compelling circumstances, which will be expounded on *infra*, the exponential increase of sentence was not justified; and that the Trial Court should have deviated from the prescribed sentence, in her favour.

40. The Appellant will submit that the minimum sentence of life imprisonment is the harshest sentence possible under our law and careful consideration is required before it is imposed.[21]

> "*A sentence of imprisonment for life, irrespective of the policies and procedures to which such sentence may be subjected by the Department of Correctional Services, must be regarded by the Court imposing it as having the potential consequence, at the very least, that the accused so sentenced will indeed be incarcerated until his*

[20] S v SMM 2013 (2) SACR 292 (SCA) inter alia at par 13.
[21] See: S v SMM 2013 (2) SACR 292 (SCA) *inter alia* at par 19.

death. It is an extreme sentence. It is the most severe sentence which may lawfully be imposed on an accused such as the one now before Court. It is a sentence which, in the ordinary course, requires a meticulous weighing of all relevant factors before a decision to impose it can be justified."

See: S v Dodo 2001 (1) SACR 301 (E) at 319 G – H

The declaration of unconstitutionality in the above matter was not confirmed by the Constitutional Court, and although this passage was criticised in **S v Dodo 2001 (3) SA 382 (CC)**, the criticism related to the attendant remarks in the ensuing paragraph which deals with the impact of the minimum sentence legislation on the separation of powers. It is submitted that the analysis of what life imprisonment entails is accurate and authoritative.

In **S v Vilakazi (*supra*)** the Supreme Court of Appeal throughout employed phrases such as "the maximum sentence that is permitted by our law, which is life imprisonment" and "To make him pay for it with the remainder of his life would seem to me to be grossly disproportionate" to emphasize the severity of life imprisonment as a sentence.

"The responsibility resting on a judicial officer may well be more onerous, in human terms, when considering the choice between a sentence of life imprisonment and a lesser sentence on the one hand, than when considering the choice between sentences of three or five

years imprisonment or the choice between a custodial and a non-custodial sentence, on the other."

Per: Ackermann J in S v Dzukuda and others;

S v Tshilo 2000 (2) SACR 443 (CC) at par 30[22]

41. The effect of life imprisonment would be that the offender is incarcerated for the rest of his life; with the important proviso that the Minister of Justice and Correctional Services could grant parole after a quarter of a century, for deserving prisoners, after an extensive enquiry.[23]

> "Life imprisonment is the most severe sentence which a court can impose. It endures for the length of the natural life of the offender, although release is nonetheless provided for in the Correctional Services Act 111 of 1998. Whether it is an appropriate sentence, particularly in respect of its proportionality to the particular circumstances of a case, requires careful consideration. A minimum sentence prescribed by law which, in the circumstances of a particular case, would be unjustly disproportionate to the offence, the offender and the interests of society, would justify the imposition of a lesser sentence than the one prescribed by law.
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> As I will presently show, the instant case falls into this category. This is evident from the approach adopted by this court to sentencing in cases of this kind."[24]

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[22] See also: S v GN 2010(1) SACR 93 (T) at par 11 – 12.
[23] See: Section 73 (5) (a) (ii), 73 (6) (b) (iv), 78, 83 and 84 of the Correctional Services Act 111 of 1998.
[24] Per Majiedt JA (Mthiyane DP, Cachalia JA, Erasmus AJA and Saldulker AJA concurring) in S v SMM 2013 (2) SACR 292 (SCA) at par 19 and 20.

42. In the result the Appellant will submit that life imprisonment should be reserved for those cases totally devoid of mitigating factors, where society requires protection from an offender, who deserves to be removed from society permanently.

43. This is so because life imprisonment is the ultimate sentence permitted under our law.[25]

44. Courts are not ordinarily permitted to consider the unsure event of parole being granted; since it is only a *spes* the prisoner acquires depending on a host of uncertain future circumstances. Therefore, a sentence of life imprisonment is exactly that; imprisonment for the rest of the prisoner's natural life.[26]

45. The Appellant will further contend that, in considering whether life imprisonment is appropriate in any particular matter; a Court should note lose sight of the burden the prescribed life sentences are placing on the prison system, which could soon face a crisis.[27] This reinforces the submission that

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[25] S v Makwanyane 1995 (2) SACR 1 (CC).
[26] See: S v S 1987 (2) SA 307 (A) at 313 H – I.
[27] See: Our faulty approach to life sentences is catching up with us; By Edwin Cameron; 10 November 2021; https://www.groundup.org.za/article/our-faulty-approach-life-sentences-catching-us/ "Long prison sentences – especially life sentences – are not the answer to our country's disturbing problem of violent crime. And wrong policy on this has given us another, urgent, problem – the bloated numbers of people we lock up for life." and "My point is that life imprisonment should be employed sparingly, cautiously and justly: not indiscriminately, as it now is. And it should not shut the door permanently on freedom, hope and reform.
And here our minimum sentencing regime is desperately misdirected. Life sentences should be truly discretionary, with no mandatory default."

life imprisonment should be reserved for those truly deserving of such sentence.

46. In considering the Appellant's personal circumstances; the probation officer's report[28] reads like a tale of two halves.

47. The life of the Appellant, at the time of the offence, with the erstwhile accused 1; is vastly different from the life she made for herself after leaving him.

48.This is reinforced by the Famsa report.[29]

49. The picture presented[30] was of an abused woman[31] who had to cope under extreme circumstances.

50. The Appellant's father passed away when she was 7 years' old and did not have a good relationship with her stepfather, since she felt that he did not love her. In the result she left home, immediately after finishing her schooling. She subsequently married the erstwhile accused 1 and initially the marriage was good.

51. However, the relationship became abusive and the husband did not contribute to the care of the children and insisted that she cared for the

[28] See: Record p 438 – 454.
[29] See: Record p 456 – p 459.
[30] Although the Appellant will attempt to be of assistance to this Honourable Court, in making specific reference to certain portions of the report; both reports should be considered in its entirety, to get a true sense of the personal circumstances.
[31] See: Record p 452 l 14 – 16.

children alone, in spite of her poor health. He was physically and emotionally abusive and she, and the children, were wholly dependent on him; since she could not find employment and had no support structure to look after the children. The erstwhile accused 1 abused alcohol and beat her.[32] He would threaten suicide if she left him. On one occasion she did manage to move to family in the Cape, but he convinced her to return. However, the abuse became worse. At the time of the incident she was under enormous pressure with three small children, two with special needs, to look after, alone, in a small apartment where she was cooped up most of the time.[33]

52. Life became better for her in Worchester.[34] She found employment and rented a flat and the children were enrolled in school. The children were happy and safe. She obtained stable employment.[35]

53. The Appellant had proven herself to be a good and responsible mother for the children after she was free from the effects of the erstwhile accused 1.[36] She ensured that her children be enrolled for therapy[37] and created a stable life for her children after the divorce.[38]

54. She was the primary care giver to the children and played an important role in her young children's development. They were close emotionally and

[32] As could be expected the erstwhile accused 1 denied these allegations while he was facing the same murder charge.
[33] See: Record p 445 l 19 – p 446 l 19.
[34] See: Record p 446 l 19 – 23.
[35] See: Record p 447 l 3 – 6; Record p 447 l 8 – 12.
[36] See: Record p 447 l 13 – p 448 l 26.
[37] See: Record p 450 l 1 – 6.
[38] See: Record p 450 l 15 – 16.

the separation after her incarceration had a devastating effect on her children.[39]

55. This is confirmed by the Famsa report, which state that the children were well adjusted and needed her, but the conviction had a devastating impact on the children.[40] This report is clear on the imperative need for the teenage daughter and son with special needs to enjoy the benefit of their mother's love and guidance.

56. In this regard it should be abundantly clear that the Appellant had already rehabilitated herself and there was no need for a severe sentence, to achieve rehabilitation. The interest of society is best served when offenders are reformed.[41]

57. In addition, it should also be clear that there would be no requirement for individual deterrence.

58. It is further trite that the accused should not be sacrificed on the altar of general deterrence.[42]

> "Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end.

[39] See: Record p 452 l 17 – p 453 l 3.
[40] See: Record p 457 l 1 – p 458 l 12; Record p 459 l 15 – 16.
[41] See: S v Maki 1994 (2) SACR 414 (E) at 419 h
[42] See: S v EN 2014 (1) SACR 198 (SCA) at [15]; S v Muller & another 2012 (2) SACR 545 (SCA); S v Furlong 2012 (2) SACR 620 (SCA) at [14]

> Where the length of a sentence, which has been imposed because of its general deterrent effect on others bears no relation to the gravity of the offence . . . the offender is being used essentially as a means to another end and the offender's dignity assailed."[43]

59. The only purpose of a severe sentence would be retribution, which had yielded to the elements of deterrence and reformation.[44]

60. The sentencing Court should be alive to the principle that the usefulness of imprisonment, to achieve the considerations of prevention and retribution, diminishes where the sentences are severely long.[45]

61. Although the children were not destitute the Court should not lose sight that the Appellant was their primary care giver and their interest should be paramount in all matters concerning them.[46] At the time of the sentencing the children were, at least temporarily, separated.[47]

62. In addition, the Appellant is suffering from various serious medical conditions, which would cause incarceration to be even more harsh than for the ordinary prisoner.[48]

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[43] per Ackermann J in S v Dodo 2001 (1) SACR 594 (CC).
[44] See: S v Skenjana 1985 (3) SA 51 (A) at 54 h – 55 e; R v Karg 1961 (1) SA 231 (A) at 236 a.
[45] See: Skenjana (*supra*).
[46] See: S v M (Centre for Child Law as Amicus Curiae) 2008 (3) SA 232 (CC) at *inter alia* par. 9 – 14, par. 20 – 21, par 28 – 33 and par 36 – 48.
[47] See: Record p 458 l 13 – 27.
[48] See: Record p 449 l 3 – 12.

63.The Appellant was, moreover, a first offender.[49]

64. The fact that the accused is a first offender should receive recognition and the following dictum by MacDonald JP in **S v Wood** (**1973 (4) SA 95 (RA) at 96 h – 97 b**) is apposite in the current matter:

> "*[t]he question of an appropriate sentence in the case of a first offender almost always presents a judicial officer with problems of particular difficulty . . . The publicity of the trial, his exposure as a criminal, the far-reaching and often devastating effect of imprisonment on his social, family and economic life are, in the case of a first offender, aspects of punishment which should never be overlooked or under-estimated*".

65. The Appellant will argue that the 12 year delay in initiating the trial, moreover, constitutes substantial and compelling circumstances.

66. The Supreme Court of Appeal had concluded that it would be unreasonable to imprison a person who had been an economically active member of society for 13 years, since he was charged, and who had not committed any other offences during this period; albeit for a lesser offence than the current.[50]

67. The Supreme Court of Appeal had also confirmed that it is generally accepted that a lengthy period between the imposition of sentence and the commission of the crime renders the sentencing process even more difficult.[51]

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[49] See: Record p 452 l 4.
[50] See: S v Grobler 2015 (2) SACR 210 (SCA) at [12].
[51] See: S v Hewitt 2017 (1) SACR 309 (SCA) at par 6.

68. Even where a sentence had to be reconsidered on Appeal, the Supreme Court of Appeal had considered factors that arose after the original sentencing in fairness to the Appellant.[52]

69. In the result the Appellant will submit that her conduct since the commission of the offence, especially regarding her remaining children, should serve as a powerful substantial and compelling circumstance.

70. The Appellant will argue that the Honourable Trial Court misdirected itself in imposing a sentence of 25 years' imprisonment for assault with the intention to cause grievous bodily harm which is excessive and an extraordinary sentence, even for a severe assault.

71. There is a general principle that there should be uniformity of sentence in respect of perpetrators with comparable personal circumstances and equal degrees of participation in the crime.[53]

72. In considering Juta's sentencing reports the only comparable sentences for assault with the intention to do grievous bodily harm involved concomitant rape charges.[54] In fact, the above are the only sentences in excess of 10 years imprisonment recorded there.

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[52]S v Balfour 2009 (1) SACR 399 (SCA) par 16.
[53] See: S v Dombeni 1991 (2) SACR 241 (A) at 245c.
[54] See: S v Sibeko 2014 JDR 1760 (GP); S v Poni 2016 JDR 1030 (ECG); see also S v JR and WN 2014 JDR 2515 (GP) apropos assault on a young child.

73. The most severe effective sentences for any assault with the intention to do grievous bodily harm the Appellant could find in Juta's Criminal law reports is 5 years' imprisonment.[55]

74. The Appellant could find no comparable sentences in Juta's South African law reports.

75. In view of the above demonstrated disparity in sentencing patterns, the Appellant will submit that; where Courts are of the view that certain offences deserve harsher punishment, those increases should be implemented gradually.[56]

76. The Court should, further, temper the cumulative effect of the sentences and order, at least, some of the sentence for assault to be served concurrently with the sentence for murder.[57]

77. In the event that this Honourable Court interferes with the sentence imposed, the Appellant will submit that the new sentence should be antedated[58] to 29 April 2019, in order to reflect the sentence that would have been appropriate at that time.

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[55] See: Makhudu v Director of Public Prosecutions 2001 (1) SACR 495 (SCA); S v Smith en Andere 2002 (1) SACR 188 (T); S v Ndou 2019 (2) SACR 243 (SCA). See also: S v B en 'n Ander 1994 (2) SACR 237 (E).
[56] See: S v Gerber 2006 (1) SACR 618 (SCA) at 622 G – 623 I.
[57] See: S v Moswathupa 2012 (1) SACR 259 (SCA) par 8 – 10; S v Muller aa 2012 (2) SACR 545 (SCA) par 10 – 11; S v Mabunda 2013 (2) SACR 161 (SCA) par 7 – 9.
[58] In terms of section 282 of the CPA.

RESPONDENT'S HEADS OF ARGUMENT [CaseLines 052-1]

INTRODUCTION

78. The appellant has been convicted in the High Court, Pretoria court, Benoni on a count of murder (read with section 52(2) of Act 105 of 1997) and assault with the intent to do grievous bodily harm. On the first count she was sentenced to life imprisonment and to 25 years' imprisonment on the second count. Leave to appeal was refused by the trial court and, on petition to the President of the Court of Appeal, leave was granted to appeal the sentences. She now appeals her sentences.

AD SENTENCE

79. As to the merits of the sentence, it is submitted that the imposition of sentence is pre- eminently a matter falling within the discretion of the sentencing Court. A Court of Appeal may only interfere with a sentence where it is satisfied that the trial Court's sentencing discretion was not judicially properly exercised.

> "Over the years our Courts of Appeal have attempted to set out various principles by which they seek to be guided when they are asked to alter a sentence imposed by the trial Court. These include the following: the sentence will not be altered unless it is held that no reasonable man ought to have imposed such a sentence, or that the sentence is out of

all proportion to the gravity or magnitude of the offence, or that the sentence induces a sense of shock or outrage, or that the sentence is grossly excessive or inadequate, or that there was an improper exercise of his discretion by the trial Judge, or that the interests of justice require it."

S V ANDERSON 1964(3) SA 494(AD) at 495 C-E

80. The test enunciated in countless decisions and is an enquiry into whether the sentence is 'shockingly inappropriate' or of such a nature that no reasonable man ought to have imposed such sentence, or that the sentence is totally out of proportion to the gravity or magnitude of the offence, or that the sentence is grossly excessive when taking into consideration the circumstances and hence whether the judicial officer misdirected himself/herself.

S V BLIGNAUT 2008 (1) SACR 78 (SCA) at 82b-d; S V MALGAS 2001(2) SA 1222 (SCA); S V JOHAAR AND ANOTHER 2010 (1) SACR 23 (SCA) at 27; S V TRUYENS 2012 (1) SACR 79 (SCA)

81. In his judgement the Court a quo refers to the prolonged suffering the defenceless 3- year-old victim had to endure distinguishes this matter form other murders and assaults. In view hereof, it is submitted that that court was not misdirected and the sentence also does not induce a sense of shock.

82. In conclusion, this Honorable Court will be requested to dismiss the appeal against the sentence.

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COLLIS J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

I Agree

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VAN DER SCHYFF J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

I Agree

_____

LE GRANGE AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION

APPEARANCES

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Instructed By:	DIRECTOR OF PUBLIC PROSECUTIONS PRETORIA
Date of Hearing:	19 August 2024
Date of Judgment	__ August 2024