

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



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 PROVINCIAL DIVISION, MAHIKENG

CASE NO: CA 87/2018

In the matter between:

PIET RANTSIE MOTLHAPING

APPELLANT

AND

THE STATE

RESPONDENT

CRIMINAL APPEAL

DJAJE AJP; MONGALE AJ

Heard: **3 NOVEMBER 2023**

Delivered: The date for the judgment hand-down is deemed to be on

17 November 2023

ORDER

The following order is made:

1. The appeal against sentence is dismissed.

2. The following is added to the sentence of the court *a quo*
“The sentence in counts 6 and 8 will run concurrently with the sentence in count 5”.
3. This judgment should be sent by the office of the Registrar to the Correctional Facility where the appellant is serving his sentence.

APPEAL JUDGMENT

DJAJE AJP

[1] This matter was decided on paper at the request of the parties having submitted comprehensive heads of argument. The appellant was arraigned before the Regional Court in Klerksdorp. He faced five counts of rape and three of robbery with aggravating circumstances. He was sentenced as follows:

- Count 1 – rape – twenty years imprisonment;
- Count 2 – robbery with aggravating circumstances – fifteen years imprisonment;
- Count 3 – rape – twenty years imprisonment;
- Count 4 – robbery with aggravating circumstances – fifteen years imprisonment;
- Count 5 – rape – life imprisonment;
- Count 6 – rape – life imprisonment;
- Count 7 – robbery with aggravating circumstances – fifteen years imprisonment;
- Count 8 – rape – life imprisonment.

The sentences in count 1,2,3,4 and 7 were ordered to run concurrently with the sentence in count 5. Nothing was ordered in respect of the sentences in count 6 and 8. The court *a quo* just stated as follows *“However in order to serve the purpose of removing you effectively from the society the life imprisonment imposed to you will run consecutively, that you will serve one life imprisonment after the other”*.

[2] Effectively, the appellant was sentenced to serve his sentence in counts 1,2,3,4,5 and 7 thereafter serve the sentence in counts 6 and 8. It is this sentence that the appellant now appeals against through his automatic right of appeal.

[3] The appellant had pleaded guilty in all counts and a statement in terms of section 112(2) of the Criminal Procedure Act 51 of 1977 was read into the record. The following was read from the statement by the appellant:

“I admit that on 5 February 2014 and at or near Jouberton in the Regional Division North West I did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit M[...] M[...] an adult female by having sexual intercourse with her without her consent.

I further admit that Section 51 (2) of the Criminal Law Amendment Act is applicable in that the complainant was raped only once.

Count two robbery, I admit that on 5 February 2014 and at near Jouberton in the Regional Division North West I did unlawfully and intentionally assault M[...] M[...] by threatening to stab her with a knife. I then took with force the following items from her to wit R900.00 and two cell phones the property were in the lawful possession of M[...] M[...]. Aggravating circumstances being that I threatened to stab her with a knife.

On five February 2014 during the day I found the complainant sitting inside a parked Volkswagen vehicle with another man. They were parked in an open veldt between Jouberton and Kanana. I then decided to rob the complainant of her cell phone. I entered the vehicle armed with a knife. I forced the men to climb inside the boot of the car I then ordered the complainant to drive to a more secluded place and park the vehicle. I robbed the complainant of two cell phones in cash that I found inside the vehicle.

I then decided to rape the complainant. I forced the complainant to lay down at the backseat of the vehicle. I then undressed her I undressed my pants and penetrated the complainant's vagina with my penis. I then proceeded to have sexual intercourse with the complainant without her consent.

I left the complainant there and ran away. I was arrested after I was linked with DNA to the rape.

I admit that the complainant was examined by Dr Tenenbalm on 5 February 2014. I admit the contents of the statement in terms of section 212 (4) and 213 (3) of the Criminal Procedure Act, 51 of 1977 that Dr Tenenbalm had completed following this examination and have no objection if it is handed in as exhibit. My blood was drawn and I am linked with the DNA to the crime, I was subsequently arrested.

I admit the contents of the DNA report and have no objection if the statement in terms of section 212 (4) of the Criminal Procedure Act, Act 51 of 1977 of Patrick Molefe Makwela is handed in as exhibit. The relevant CAS number is Jouberton CAS61/2/2014 as referred to at point 4, point 1, of the DNA report. Please note that this report is also applicable to counts 3, 5, 6 and 8.

Count 3, I admit that on 3 March 2013 and at or near Kanana in the Regional Division North West I did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit G[...] M[...] an adult female by having sexual intercourse with her without her consent. I further admit that Section 51 (2) of the Criminal Law Amendment Act is applicable in that the complainant was raped only once.

Count 4 robbery, I admit that on 23 March 2013 and at or near Kanana in the Regional Division North West, I did unlawfully and intentionally assault G[...] M[...] by threatening to stab her with a knife. I then took with force the following items from her to wit one bank card the property or in the lawful possession of G[...] M[...]. Aggravating circumstances being that I threatened to stab her with a knife.

On 23 March 2013 during the morning I was with one Solatise who is currently in the Eastern Cape. We found the complainant and another man sitting inside a parked Toyota bakkie. We then decided to rob them, I had a knife in my possession. We took a bank card that we found inside the car and demanded the pin number from the complainant and the other man. We then tied the man up and I drove with the complainant to another stop.

I then decide to rape the complainant. I then grabbed the complainant inside the vehicle I undressed the complainant, I undressed my pants and penetrated the complainant's vagina with my penis. I then proceeded to have sexual intercourse with the complainant without her consent.

I drove further with the complainant until we reached Kanana a police vehicle approached us and I left the complainant there inside the vehicle and ran away.

I was arrested after I was linked with DNA to this rape. I admit that the complainant was examined by Dr Moroke on 24 March 2013. I admit the contents of the statement in terms of Section 212 (4) and 213 (3) of the Criminal Procedure Act, Act 51 of 1977 that Dr Moroke had completed following this examination and has no objection if it is handed in as exhibit. My blood was drawn and I am linked with the DNA to the crime. I was subsequently arrested

I admit the contents of the DNA report and have no objection if the statement in terms of section 212 (4) of the Criminal Procedure Act, Act 51 of 1977 of Patrick Molefe Makwela is handed in as exhibit, the relevant CAS number is Kanana CAS160/3/2014 at point 4, point1, point 9 of the DNA report. Please note that this report is also applicable to count 1, 5, 6 and 8.

Count 5 rape, I admit that on 5 July 2013 in at or near Jouberton in the Regional Division North West I did unlawfully and intentionally commit and act of sexual penetration with the complainant to wit N[...] N[...], an adult female by having sexual intercourse with her without her consent. I further admit that section 51(1) of the Criminal Law Amendment Act is applicable in that the complainant was raped by more than one person.

On 5 July 2013 during the evening I found the complainant walking alone near the edge Kanana township I was in the company of one Solatise, we were both armed with knives. We then decided to rape the complainant. We then grabbed the complainant with our knives drawn and pulled her behind the stadium grounds, I forced the complainant to lay down on the ground and undressed her. I then undressed my pants and penetrated the complainant's vagina with my penis. I then proceeded to have sexual intercourse with the complainant without her consent. After I had raped the complainant Solatise also raped the complainant. We left the complainant there and ran away. I was arrested after I was linked with DNA to this particular rape.

I admit the complainant was examined by Dr Matika on 5 July 2013. I admit the contents of the statement in Section 212(4) and 213 (3) of the Criminal Procedure Act, Act 57 /1977 that Dr Matika had completed following this examination and have no objection if it is handed in as exhibit.

My blood was drawn and I am linked with the DNA to the crime I was subsequently arrested. I admit the contents of the DNA report and have no objection if the statement in terms of Section 212 (4) of the Criminal Procedure Act, Act 51/1977 of Patrick Molefe Makwela is handed in as exhibit.

The relevant CAS number is Kanana CAS50/7/13 at point 4, point one, point 6 and 4.3 of the DNA report. Please note that this report is applicable to count 1, 3, 6 & 8

Count 6, I admit that on the 10 July 2014 in at or near Jouberton in the Regional Division North West I did unlawfully and intentionally commit an act

of sexual penetration with the complainant to wit N[...] M[...], an adult female by having sexual intercourse with her without her consent.

I further admit that Section 51 (1) of the Criminal Law Amendment Act is applicable in that the complainant was raped by more than one person.

Count seven robbery, I admit that on 10 July 2014 in at or near Jouberton in the Regional Division North West, did unlawfully and intentionally assault N[...] M[...] by threatening to stab her with a knife. I then took with force the following items from her to wit one pair of tekkies one cell phone the property or in the lawful possession of N[...] M[...].

On 10 July 2014 during the day I was walking with one Bashe, his current whereabouts are unknown. In the veldt between Jouberton and Kanana. We were both armed with knives. We found the complainant and another man inside a parked vehicle. We then decided to rob and rape the complainant. Bashe broke the car window and we entered inside the car, armed with knives.

We drove the car to a more secluded spot and stopped the car. I then grabbed the complainant's cell phone.

I then forced the complainant to lay down on the ground and undressed her. I then undressed my pants and penetrated the complainant's vagina with my penis. I then proceeded to have sexual intercourse with the complainant without her consent.

After I had raped the complainant Bashe also raped the complainant. We left the complainant there and ran away.

I was arrested after I was linked with DNA to this particular rape. I admit that the complainant was examined by Dr Leburu on 10 July 2014. I admit the contents of the statement in terms of Section 212 (4) and 213 (3) of the Criminal Procedure Act, Act 51/1977 that Dr Leburu had completed following this examination I have no objection if it is handed in as exhibit.

My blood was drawn and I am linked with DNA to the crime. I was subsequently arrested.

I admit the contents of the DNA report and have no objection if the statement in terms of Section 212 (4) of the Criminal Procedure Act, Act 51/1 97 of Patrick Molefe Makwele is handed in as exhibit the relevant CAS number is Jouberton CAS123/7/2014 at point 4, point 1 point 5 of the DNA report. Please note that this report is also applicable to count 1, 3, 5 and 8.

Count 8 rape, I admit that on the 8 August 2014 and at or near Jouberton in the Regional Division North West, I did unlawfully and intentionally commit an act of sexual penetration with the complainant T[...] S[...] an adult female by having sexual intercourse with her without her consent. I further admit that Section 51 (1) of the Criminal Law Amendment Act is applicable and that the complainant was raped by more than one person.

On 8 August 2014 during the day I was walking with one Zinzile, who has said subsequently passed away in the veldt between Kanana and Jouberton. We found the complainant and another man at the back seat of a parked car busy having sexual intercourse. I opened the car door and grabbed the complainant from behind both Zinzile and I were armed with knives.

I then decided to rape the complainant. I forced the complainant to lay down on the back seat I undressed my pants and penetrated the complainant's vagina with my penis. I then proceeded to rape the complainant without her consent. Zinzile also had sexual intercourse with the complainant. We then left the complainant there and ran away. I was arrested after I was linked with DNA to this rape.

I admit that the complainant was examined by Dr Leghalakladi on 9 August 2014, I admit the contents of the statement in terms of Section 212 (4) and 213 (3) of the Criminal Procedure Act, Act 51/1977 that Dr Leghalakladi had completed following this examination and have no objection if it is handed in as exhibit. My blood was drawn and I am linked with DNA to the crime.

I was subsequently arrested. I admit the contents of the DNA report and have no objection if the statement in terms of Section 212 (4) of the Criminal Procedure Act, Act 51/1977 of Patrick Molefa, sorry Partick Molefi Makwela is handed in as exhibit. The relevant CAS number is Jouberton CAS123/7/2014 at point 4, point 1, point 3 of the DNA report. Please note that this report is also applicable to count 1, 3, 5 and 6.

Each time I had sexual intercourse with the respective complainants without their consent I knew that I was committing the crime of rape punishable by a Court of Law. Each time I robbed the respective complainants I knew that I was committing the crime of robbery punishable by a Court of Law.

I did not have a right or permission to have sexual intercourse with the respective complainants. I have no legal defence for my criminal actions. I did not have the right or permission to rob any of the respective complainants. I believe that if I had not threaten them with a knife the respective complainants would not have allowed me to take their cell phones and money or be subdued so that I could rape them.

When I robbed the respective complainants I had the intention to permanently deprive the owners of their ownership. I kept some of the cell phones for my own use. I did sell some of them to unknown persons in the township. Bashe took the tekkies that were robbed in count seven.

I further admit that all samples taken from the respective complainants were taken properly, send, sealed and delivered properly to the Laboratories in Pretoria and received intact. I admit that all samples taken from me were taken from the respective complainants as well as my own samples were properly sealed.

I am remorseful about my criminal behaviour and request the honourable Court to take my plea of guilty into consideration during sentencing.”

[4] The court *a quo* accepted the guilty plea on all counts and convicted the appellant as charged.

- [5] During sentencing the state proved previous convictions of rape against the appellant. The appellant was previously convicted of rape in **1996** and **2002**. He was a third time offender and therefore sentenced to twenty years imprisonment in counts 1 and 3. In counts 2, 4 and 7 of robbery with aggravating circumstances he was given the minimum sentence of fifteen years for a first offender. The life imprisonment in counts 5, 6 and 8 were imposed as the complainants in these counts were raped by more than one person. The court *a quo* found that there were no substantial and compelling circumstances in all the counts.
- [6] In the main the appellants' ground of appeal is that the court *a quo* misdirected itself by not finding that there were no substantial and compelling circumstances despite the appellant having pleaded guilty in all the counts. Further that the sentence of life imprisonment after the other was not blended with mercy and induces a sense of shock as the appellant only has one life.
- [7] The respondent submitted that the only misdirection by the court *a quo* is the 'structuring of the sentence by not ordering the sentences to run concurrently with the life imprisonment imposed in count 5, 6 and 8.
- [8] Section 280 of the Criminal Procedure Act deals with concurrent sentences as follows:
- "280. Cumulative or concurrent sentences**
- (1) *When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of*

another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.

(2) *Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently.”*

[9] It is clear that sentences generally run after the expiration of the other unless the court orders otherwise. In cases where there is a sentence of life imprisonment consideration must be had to the provision of section 39(2)(a)(i) and (ii) of the Correctional Services Act 111 of 1998 which provides that:

“39. Commencement, computation and termination of sentences.

(2)...

(a) *Subject to the provisions of paragraph*

(b) *a person who receives more than one sentence of incarceration or receives additional sentences while serving a term of incarceration, must serve each such sentence, the one after the expiration, setting aside or remission of the other, in such order as the National Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs that such sentences shall run concurrently but—*

(i) *any determinate sentence of incarceration to be served by any person runs concurrently with a life sentence or with sentence of incarceration to be served by such person in consequence of being declared a dangerous criminal;*

(ii) *one or more life sentences and one or more sentences to be served in consequence of a person being declared a dangerous criminal also run concurrently.”*

- [10] The Supreme Court of Appeal in **S v Moswathupa 2012(1) SACR 259 (SCA)** held that: *“Where multiple offences need to be punished, the court has to seek an appropriate sentence for all offences taken together. When dealing with multiple offences a court must not lose sight of the fact that the aggregate penalty must not be unduly severe”*.
- [11] In this matter the court *a quo* clearly did not order that the sentences in counts 6 and 8 should run concurrently with the sentence in count 5. Instead, the court expressly ordered that the appellant should serve the sentence of life one after the other. Taking into consideration section 39 (2)(a)(ii) of the Correctional Services Act that was a misdirection entitling the court of appeal to interfere.
- [12] 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) para 22.**
- [13] The appellant in this matter was convicted of an offence which has been described as a horrific and dehumanizing violation of a person’s dignity. It not only violates the mind and body of a complainant but also one that infuriates the soul. The appellant went on a rampage of attacking women and raping them. In some instances, in the presence of their partners. He did not only do this once but several times. The appellant was previously convicted and sentenced to imprisonment for rape but he was not rehabilitated. He continued after his release and should be removed from the society.

[14] In **S v Vilakazi 2012 (6) SA 353 (SCA)** it was held that:

“The personal circumstances of the appellant, so far as they are disclosed in the evidence, have been set out earlier. In cases of serious crimes, the personal circumstances of the offender by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period will be, and those seem to me to be the kind of `flimsy` grounds that Malgas said should be avoided”

[15] This is the kind of matter where the circumstances of the appellant should recede into the background. The fact that the appellant pleaded guilty cannot be considered as a substantial and compelling circumstance as the appellant was linked with DNA evidence. He clearly did not have a defence to these offences. The court *a quo* correctly found that there were no substantial and compelling circumstances in all the counts.

[16] Having considered the submissions on behalf of the appellants and the respondent, the appeal against sentence stands to be dismissed save for the order that the sentences should run concurrently.

Order

[17] Consequently, the following order is made: -

1. The appeal against sentence is dismissed.
2. The following is added to the sentence of the court *a quo*

“The sentence in counts 6 and 8 will run concurrently with the sentence in count 5”.

3. This judgment should be sent by the office of the Registrar to the Correctional Facility where the appellant is serving his sentence.

J T DJAJE
ACTING JUDGE PRESIDENT
NORTH WEST DIVISION; MAHIKENG

I agree

K MONGALE
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING : 03 NOVEMBER 2023

DATE OF JUDGMENT : 17 NOVEMBER 2023

COUNSEL FOR THE APPELLANT : MR MADIBA

COUNSEL FOR THE RESPONDENT : ADV K MAMPO