

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



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

Appeal No.: CA 03/2019

Regional Court Case No.: R/CA 16/2016

In the matter between:

BEN MOCHOLE

Appellant

and

THE STATE

Respondent

Coram:

Petersen ADJP & Maree AJ

Date of hearing:

19 June 2024

Delivered: The judgment was handed down electronically by circulation to the applicants' representative *via* email. The date and time for hand-down is deemed to be **27 June 2024** at 10h00.

ORDER

[8] In the result, the following order is made:

- (i) The appeal against sentence is upheld.

- (ii) The sentence imposed by the court *a quo* is replaced with the following sentence, imposed on appeal:

“The accused is sentenced to:

1. *Life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997.*
2. *The name of the appellant is to be included in the National Register for Sex Offenders.*
3. *In terms of section 103(1) of the Firearms Control Act 60 of 2000, the accused shall remain unfit to possess a firearm.”*

- (iii) The sentence is antedated to 11 August 2017.

JUDGMENT

PETERSEN ADJP

- [1] The appellant was charged in the Regional Court, Moloopo with a single count of rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.
- [2] The appellant pleaded not guilty on 10 November 2016. On 9 May 2017 the appellant was convicted as charged. On 11 August 2017 he was sentenced to life imprisonment.
- [3] The appeal is before this Court by virtue of the automatic right of appeal premised on the sentence of life imprisonment imposed by the Regional Magistrate. The appeal lies against the sentence only.
- [4] In the grounds set out in the Notice of Appeal, the appellant contends in general terms that the Regional Magistrate erred in imposing life imprisonment as a sentence since it is not proportionate to the crime, the criminal and the interests of society. In particular, the appellant takes issue with the fact that the Regional Magistrate considered a previous conviction for rape

which was not properly proven by the State and which the appellant was not afforded an opportunity to admit or deny. The Regional Magistrate is also said to have erred in failing to consider the pre-sentence detention of the appellant; and that he is alleged to have been intoxicated at the time of the commission of the crime.

- [5] It is trite that a court of appeal will not lightly interfere with the sentencing discretion of the trial court. In *S v De Jager* 1965 (2) SA 616 (A) at 629, Holmes JA stated as follows regarding the discretion of a court of appeal to interfere with the sentence imposed by a lower court:

“It would not appear to be sufficiently recognised that a Court of appeal does not have a general discretion to ameliorate the sentences of trial Courts. The matter is governed by principle. It is the trial Court which has the discretion, and a Court of appeal cannot interfere unless the discretion was not judicially exercised, that is to say unless the sentence is vitiated by irregularity or misdirection or is so severe that no reasonable court could have imposed it. In this latter regard an accepted test is whether the sentence induces a sense of shock, that is to say if there is a striking disparity between the sentence passed and that which the Court of appeal would have imposed. It should therefore be recognised that appellate jurisdiction to interfere with punishment is not discretionary but, on the contrary, is very limited.”

- [6] In *S v Malgas* 2001 (2) SA 1222 Marais JA said the following:

“[12]...A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it

simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate Court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate Court is at large. However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate Court would have imposed had it been the trial court is so marked that it can properly be described as 'shocking', 'startling' or 'disturbingly inappropriate'."

[7] In *Bogaards v S* 2013 (1) SACR 1 (CC), the Constitutional Court stated the position as follows:

"[41] Ordinarily, sentencing is within the discretion of the trial court. An appellate court's power to interfere with sentences imposed by courts below is circumscribed. It can only do so where there has been an irregularity that results in a failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. A court of appeal can also impose a different sentence when it sets aside a conviction in relation to one charge and convicts the accused of another."

[8] It is apposite to have regard to a brief exposition of the facts leading to the conviction of the appellant on the charge of rape of the four (4) year old girl child ('TM'). GM, the mother of the child testified that on 19 September 2015 at around 17h10pm she was visiting Lydia Phiri. Whilst seated with Ms Phiri, TM's father

emerged from their house and told her that he was leaving on a journey to a church in Johannesburg. TM wanted to go with her father, but she told her that she could not. TM left Ms Phiri's yard, where she played with a neighbour's child just next to the fence. After a while, Ms Phiri told a certain Khutlano to look for TM who was now out of sight. Khutlano returned and told GM that TM could not be found anywhere in the street.

- [9] As GM stood up from where she was seated with Ms Phiri to look for TM, a group of children emerged with TM who was part of the group. The children were screaming, and TM was crying. GM wanted to "whip" TM but the children urged her not to do so, and when she asked TM what was wrong, the children reported that Mr Schoolberg had raped TM. GM was moved to tears and asked the children to take her to the residence of Mr Schoolberg, whom she did not know. On the way to Mr Schoolberg's residence, GM asked TM what he did to her, and she told her that he did bad things to her. In GM's mind this implied that he raped TM. On arrival at Mr Schoolberg's house, which was pointed out, she remonstrated with a certain Sophie Mochole Gomo, who lived in one of three houses situated in the same yard as Mr Schoolberg's house, about what she had seen. Sophie told her, that her own child called her and told her about a child entering the house of Mr Schoolberg with him. She confronted Mr Schoolberg, who told her that TM's mother had sent her to fetch a pair of shoes from him. Mr Schoolberg at that time, GM arrived, had left his house and his whereabouts was not known.

- [10] GM left for the police station with the children and TM. Later at Thutuzela Care Centre, when TM was examined by a Nurse, she observed that she had an abrasion on her vagina with a semen like discharge.
- [11] Eunice Kelebogile Letshabo testified that on 19 September 2015 she saw the appellant passing by her house with TM on the way to his house. She did not see what happened thereafter.
- [12] Motlale Kgomo Sophie Mochole testified that on 19 September 2015 at around 16h30pm whilst with Mpho Lema and a certain Nunu, she saw the appellant who is her cousin arriving with TM. When she asked him where he was taking the child, he told her that the child was collecting a pair of shoes for her mother. A short while later, some children arrived and told her that the appellant was undressing TM. When she entered the shack of the appellant, she did not see TM. Her own child pulled TM from behind the door. When she asked TM what the appellant did to her, she wanted to cry and she was shivering. When she confronted the appellant and asked him what he did to the child, he told her that he did not do anything to her. She left and the appellant told her that he was taking TM home.
- [13] A J88 medical report compiled by Darius Motsime Motsepe, a nurse by profession, was admitted as evidence in terms of section 212(4) of the Criminal Procedure Act 51 of 1977, and he was

called to adduce oral testimony. Mr Motsepe found the clitoris and urethral orifice of TM to be bruised; the *labia majora* was sunken inwards due to the application of force and bruised on both sides; and the *fossa navicularis* was bruised at positions 5, 6 and 7 o' clock.

[14] The appellant elected not to testify in his defence, and no version was therefore placed before the Regional Magistrate. Any cross examination by the appellant and any other submissions surrounding the offence on appeal are therefore of no value.

[15] In my view, nothing turns on the first ground of appeal. It is incumbent on an appellant to set out with some degree of specificity and detail where the Regional Magistrate erred in the proportionality test adumbrated in *Malgas supra* and confirmed in *S v Dodo* 2001 (3) 382 (CC).

[16] The only ground of appeal with merit is the attack on the Regional Magistrate considering a previous conviction for rape which the State had not proven. The only previous conviction proven and admitted by the appellant was for escaping or attempting to escape which offence was committed on 3 May 1996 and for which he was sentenced to 18 months imprisonment on 28 March 2003. The circumstances surrounding this conviction were never interrogated by the trial court.

[17] A suitability report for consideration of correctional supervision as a sentencing option was requested in the trial court, by the defence on behalf of the appellant. The report was compiled by Mamorema Refilwe Hazel Kganticoe, a social worker in the employ of the Department of Correctional Services. Under the heading *LIKELY RISK FACTORS*, Ms Kganticoe reported as follows under paragraphs (b), (d), (e) and (g):

“(b) Previous convictions

The court referral does not indicate that the accused has previous conviction (no SAP 69 attached).

The accused stated that he was convicted of rape previously.

According to him he was in a relationship with a woman, they had conflicts and constantly drinking alcohol. They fought and when they separated she alleged that he raped her. He was convicted of the crime and served the sentence.

...

(d) Previous sentences of correctional supervision/parole placement

Yes – from 2004/04/15 to 2005/05/14.

Sentence effective for six years.”

...

(e) Violation of parole conditions/escapes/absconding

None.

...

(g) Use of drugs/alcohol

He admitted that he has been using alcohol and does not smoke. In his opinion his use is moderate and has no negative impact in his behaviour or general functioning.

(As the accused alleges that he did not commit the crime therefore it cannot be determined if substance abuse had an impact in the committal of the accrual crime however the client stated that he had been drinking on that particular day in question).”

- [18] It is apposite, considering the reliance by the Regional Magistrate on the information about a previous conviction for rape raised for the first time in Ms Kganticoe’s report and the consumption of alcohol (liquor) in the judgment on sentence, to what was said:

“...You admitted to having a previous conviction of rape for which you have served an imprisonment term. You had also taken liquor.

...

The accused had taken liquor on the day of the incident.

The following was stated by Holmes JA in *S v Ndlovu* 1965 (2) SA 465 with regards to the impact of intoxication on sentence. Intoxication is one of humanities old age frontiers which may depending on the circumstances reduce the moral blameworthiness of a crime. On the other hand intoxication may again depending on the circumstances aggravate the aspect of blameworthiness. It is neither necessary nor desirable to say that the court has a discretion. The court has a judicial discretion to decide on the facts of each case whether intoxication should be regarded as substantial and compelling. I am unable to find intoxication to be a factor which reduces the accused without blameworthiness in this case. It is not even clear how much liquor the accused had taken on that day and what effect it had on him.

...

He also has a previous conviction for rape. There is sufficient proof that accused is actually a danger to the society...”

- [19] From the report of Ms Kganticoe, it is evident that the appellant maintained his innocence and dispelled any notion of being intoxicated on the day of the rape. The ground of appeal

predicated on allegations of intoxication is therefore without merit. The appellant did not raise intoxication as a defence, nor did he testify in his defence to adduce such evidence. The only evidence before the trial court was that of the State and no evidence was adduced by the State indicative of the appellant having consumed alcohol (liquor) on the day of the rape. This issue raised by the appellant with Ms Kganticoe is of no moment and should have been considered irrelevant to the Regional Magistrate.

[20] The Regional Magistrate misdirected herself by having regard to the unsubstantiated allegation that the appellant consumed liquor on the day of the rape. On her own reasoning, the Regional Magistrate stated that *'It is not even clear how much liquor the accused had taken on that day and what effect it had on him.'* This should not have been a factor for consideration during sentence.

[21] The most disconcerting aspect of the judgment on sentence, however, is the statement by the Regional Magistrate, that the appellant *"admitted to having a previous conviction of rape for which you have served an imprisonment term."* The appellant at no stage during the proceedings prior to sentence formally admitted a previous conviction for rape or the term of imprisonment, save for such intimation to the social worker. The only recognized procedure for proving previous convictions is found in section 271 of the Criminal Procedure Act 51 of 1977 ('the CPA') which provides as follows:

“271 Previous convictions may be proved

- (1) The prosecution may, after an accused has been convicted but before sentence has been imposed upon him, produce to the court for admission or denial by the accused a record of previous convictions alleged against the accused.
- (2) The court shall ask the accused whether he admits or denies any previous conviction referred to in subsection (1).
- (3) If the accused denies such previous conviction, the prosecution may tender evidence that the accused was so previously convicted.
- (4) If the accused admits such previous conviction or such previous conviction is proved against the accused, the court shall take such conviction into account when imposing any sentence in respect of the offence of which the accused has been convicted.”

[22] I align myself with the sentiments expressed by Spilg J in *S v Nhlapo* 2012 (2) SACR 358 (GSJ) at paragraphs 30-31 about the passive attitude adopted by the prosecutor despite the fact that a probation officer had recorded in her report that the accused told her about a previous conviction in 2008 for attempted rape. This is analogous to the present appeal where the previous conviction for rape was alluded to in the pre-sentence report.

[23] At paragraphs 23-24, Spilg J also took the view that the ‘permissive nature’ of s 271 must yield to the ‘peremptory provisions’ of the CLAA, which requires a prosecutor to present facts which a court can consider when imposing sentence. At paragraphs 27–28 Spilg J thus stated:

‘Accordingly in order for a court to discharge its adjudicative responsibilities when considering sentence, including those imposed by statute, it is necessary for the court to have details of previous convictions placed before it. To accord the prosecutor a discretion which is not subject to judicial oversight may result in like offenders being treated differently, even if the prosecutor had obtained the SAP69 beforehand. It appears that the permissive nature of s 271 (1) must yield both to the legislative intent of s 51 of [Act 105 of 1997] and the inherent danger of conferring an arbitrary and potentially discriminatory power on the prosecution. . . A failure to properly establish and inform the presiding officer of previous convictions imposed on the offender adversely affects the proper administration of justice and undermines the court’s responsibilities where the minimum-sentencing regime applies under . . . Act [105 of 1997]. At best, it ought to be countenanced only in exceptional circumstances that are properly explained to the court. Ordinarily there is no apparent reason why the SAP69 should not have been requested by and provided to a prosecutor before sentencing, and in good time to enable the accused to consider it.’ See too: *S v Smith* 2019 (1) SACR 500 (WCC).

[24] It should follow axiomatically that failing section 271(1) and (2) having been followed and the appellant formally admitting a previous conviction for rape, the Regional Magistrate was not entitled to take into account what the appellant told the social worker. Tellingly, no opportunity was availed to the State once the information was revealed in the pre-sentence report to prove such previous conviction in accordance with section 271(1) of the CPA.

[25] The finding by the Regional Magistrate that the appellant was a danger to society based on the alleged rape conviction was therefore a serious misdirection which on a reading of the

judgment on sentence weighed heavily on the mind of the Regional Magistrate. I hasten to add that the Regional Magistrate in sentence also misconstrued the age of the child as 12 years old when in fact she was 4 years and six months old at the time of the rape.

[26] The misdirection on the part of the Regional Magistrate constitutes a material misdirection which enjoins this Court to consider sentence afresh, as if it were the trial court. Whilst the sentence imposed by the Regional Magistrate now bears no relevance, this Court is at large to consider sentence which dependent on an assessment of the evidence and submissions in mitigation and aggravation yield the same result, but clear of the misdirection by the Regional Magistrate.

[27] The approach to sentencing endorsed in *Malgas* and summarized at paragraph 25 of the judgment, has mustered constitutional approval in *S v Dodo* 2001 (3) 382 (CC).

[28] In *Diniso v S* (CA14/22) [2023] ZANWHC 11 (7 February 2023), the Court succinctly set out the duty of a sentencing court at paragraphs 31:

“[31] Notwithstanding the arduous duty that a sentencing court is seized with, the exercising of a sentencing discretion is aimed at the attainment of a balance. The balance is directed at three prominent factors, namely, the crime, the offender and the interests of the community. (See *S v Zinn* 1969 (2) SA 537 (A) at 540G-H). In *S v RO and Another* 2000 (2) SACR 248 (SCA) at paragraph [30] Heher JA stated the following in this regard:

“Sentencing is about achieving the right balance or in more high-flown terms, proportionality. The elements at play are the crime, the offender, the interests of society with different nuance, prevention, retribution, reformation and deterrence, invariably there are overlaps that render the process unscientific, even a proper exercise of a judicial function allows reasonable people to arrive at different conclusions.”

[29] The report of Ms Kganticoe also served to set out the personal circumstances of the appellant. The defence in the trial court further addressed the court in mitigation; whilst heads of argument and oral submissions were advanced by the State. Against this background, this Court as stated above now considers sentence afresh, as if it were the trial court.

[30] The appellant was born on 08 February 1974. He would have been 41 years old at the time of the commission of the crime and 43 years old at the time he was sentenced. Presently, he is 50 years old. He was raised by his now deceased parents who were married, with his six other siblings. Of the seven siblings, four are deceased and three are alive. The family appear to have led a nomadic lifestyle, having resided in several farm areas. Before moving to Mahikeng they resided in Coligny. As a result of the lifestyle of the family he has no formal education. The appellant resided with his siblings in their deceased parents' house until it was razed to the ground. They subsequently moved to reside at their uncles' homestead where they occupied one of two informal shacks on the premises. He is single and has no children.

[31] The appellant maintains his innocence and therefore has demonstrated no remorse for raping the minor child of four. Nothing in the personal circumstances of the appellant stands out as substantial and compelling either individually or cumulatively to merit deviation from the mandated sentence of life imprisonment.

[32] The four-year-old girl child was lured by the appellant to his shack where, although no clear details are evident in the evidence, the medical evidence is demonstrative of forceful sexual violation of the child. The injuries noted upon gynaecological examination of the child speaks volumes of the extent of the violation of the young child. That the offence itself and the circumstances thereof are reprehensible cannot be overemphasized. The sentiments expressed in *S v Chapman* 1997 (2) SACR (SCA) at 5A-D are apposite in this regard:

“Rape is a serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. The rights to dignity, to privacy and the integrity of every person are basic to the echoes of the Constitution and to any defensible civilization. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquility of their homes without fear, the apprehension and the insecurity, which constantly diminishes the quality, and enjoyment of their lives. The courts are under a duty to send a clear message to the accused, to other potential rapists and to the community: We are determined to protect the

quality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights.”

[33] In *DPP, North Gauteng v Thabethe* 2011 (2) SACR 567 (SCA) 577 G-I, the Supreme Court of Appeal said the following in respect of the rape of women and children more than a decade ago, with the scourge not having dissipated to date:

“Rape of women and young children has become cancerous in our society. It is a crime, which threatens the very foundation of our nascent democracy, which is founded on protection and promotion of the values of human dignity, equality and the advancement of human rights and freedoms. It is such a serious crime that it evokes strong feelings of revulsion and outrage amongst all right thinking and self-respecting members of society. Our courts have an obligation in imposing sentences for such a crime, particularly where it involves young, innocent, defenseless and vulnerable girls, to impose the kind of sentences which reflect the natural outrage and revulsion felt by the law-abiding members of society. A failure to do so would regrettably have the effect of eroding the public confidence in the criminal justice system.”

[34] In *Mashigo and another v The State* (20108/2014) [2015] ZASCA 65 (14 May 2015), Bosielo JA remarked at paragraph 31:

‘It is sad and a bad reflection on our society that 21 years into our nascent democracy underpinned by a Bill of Rights, which places a premium on the right to equality (s 9) and the right to human dignity (s 10), we are still grappling with what has now morphed into a scourge to our nation...Needless to state that courts across the country are dealing with instances of...abuse of women and children on a daily basis. Our media in general is replete with gruesome stories of ... women and child abuse on a daily basis.’

[35] The interests of society must be given due consideration. See para [31] of *Diniso supra*. The imposition of sentence must be victim centred as adumbrated at paragraph 16 of *Matytyi supra*. Regrettably, the impact of the crime on the child and her family was not addressed by the prosecutor or interrogated by the Regional Magistrate. In the circumstances, I align myself with the sentiments expressed in *Maila v S* (429/2022) [2023] ZASCA 3 (23 January 2023) in this regard, which involved the rape of a 9 year old victim by her uncle. The following extract from the judgment is apposite:

“[51] It must be noted that even without a psychological assessment, from reported cases of rape based on literature and evidence of experts in court, rape has a devastating impact on anyone, let alone a child... The experts have noted certain features common in all rape cases: post-traumatic stress disorder (PTSD), including flashbacks, nightmares, severe anxiety, and uncontrollable thoughts. Depression, including prolonged sadness, feelings of hopelessness, unexplained crying, weight loss or gain, loss of energy or interest in activities previously enjoyed, suicidal thoughts or attempts. Dissociation, including not being able to focus on work or on schoolwork, as well as not feeling present in everyday situations...”

[36] The appellant violated the trust of the 4-year-old innocent child when he took her to his shack and violated her. He rendered her emotionally traumatised, as she was found shaking and crying. She verbalised to her mother that he did “*bad things to her.*” The innocence of the child was robbed of her. The incident will undoubtedly have an impact on the child in her formative years.

[37] Lastly, the sentiments expressed in *Maila* at paragraphs 58 to 60 are equally apposite in sentencing the appellant:

“[58] The appellant infringed the right to dignity and the right to bodily and psychological integrity of the complainant, which any democratic society (such as South Africa) which espouses these rights, including gender equality, should not countenance for the future of its children, their safety and physical and mental health. In *S v Jansen*, the court stated it thus:

‘Rape of a child is an appalling and perverse abuse of male power. It strikes a blow at the very core of our claim to be a civilised society. The community is entitled to demand that those who perform such perverse acts of terror be adequately punished and that the punishment reflect the societal censure. It is utterly terrifying that we live in a society where children cannot play in the streets in any safety; where children are unable to grow up in the kind of climate which they should be able to demand in any decent society, namely in freedom and without fear. In short, our children must be able to develop their lives in an atmosphere which behoves any society which aspires to be an open and democratic one based on freedom, dignity and equality, the very touchstones of our Constitution.

[59] Taking into account *Jansen*, *Malgas*, *Matyityi*, *Vilakazi* and a plethora of judgments which follow thereafter as well as regional and international protocols which bind South Africa to respond effectively to gender-based violence courts should not shy away from imposing the ultimate sentence in appropriate circumstances such as in this case. With the onslaught of rape on children, destroying their lives forever, it cannot be ‘business as usual’. Courts should, through

consistent sentencing of offenders who commit gender-based violence against women and children. not retreat when duty calls to impose appropriate sentences. including prescribed minimum sentences. Reasons such as lack of physical injury, the inability of the perpetrator to control his sexual urges the complainant (a child) was spared some of the horrors associated with oral rape, which amount to the acceptance of the real rape myth. The accused was drunk and fell asleep after the rape, the complainant accepted gifts (in this case, sweets) are an affront to what the victims of gender-based violence in particular rape endure short and long term. And perpetuate the abuse of women and children by courts. When the Legislature has dealt some of the misogynistic myths a blow. courts should not be seen to resuscitate them by deviating from the prescribed sentences based on personal preferences of what is substantial and compelling and what is not. This will curb, if not ultimately eradicate gender-based violence against women and children and promote what Thomas Stoddard calls 'culture shifting change'.

[60] The message must be clear and consistent that this onslaught will not be countenanced in any democratic society which prides itself with values of respect for the dignity and life of others. especially the most vulnerable in society: children..."

[38] I have stated *supra* that there are no substantial and compelling circumstances inherent in the personal circumstances of the appellant, whether individually or cumulatively. In considering the nature of the crime and the circumstances relevant thereto, I can similarly find no substantial and compelling circumstances to deviate from the mandated sentence of life imprisonment.

[39] The mandated sentence of life imprisonment accordingly stands to be imposed, with ancillary orders that the name of the appellant be included in the National Register for Sex Offenders; and that he remains unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.

Order

[40] In the result, the following order is made:

- (i) The appeal against sentence is upheld.
- (ii) The sentence imposed by the court *a quo* is replaced with the following sentence, imposed on appeal:

“The accused is sentenced to:

- 4. Life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997.*
- 5. The name of the appellant is to be included in the National Register for Sex Offenders.*
- 6. In terms of section 103(1) of the Firearms Control Act 60 of 2000, the accused shall remain unfit to possess a firearm.”*

- (iii) The sentence is antedated to 11 August 2017.

A H PETERSEN

**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

I agree.

G V MAREE

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES:

FOR THE APPELLANT: MR M V KEKANA
INSTRUCTED BY: Legal Aid South Africa
Mahikeng Local Office
Borekelong House
742 Dr. James Moroka Drive
MMABATHO

FOR RESPONDENT:

ADV. N B MUDAU

INSTRUCTED BY:

DPP, Mmabatho

Mega City Building

East Gallery

MMABATHO