

S v W D (AR 326 of 2009) [2009] ZAKZPHC 48 (08 October 2009)

KEY CONCEPTS	
Indecent assault of 3 minor females	Harm suffered by complainant
Guilty plea in sexual offences cases	Duty on prosecutor to lead evidence of harm in guilty plea

The appellant, a 39-year-old man, was convicted of 3 counts of indecent assault perpetrated against three girls, aged 6, 7 and 11. The appellant pleaded guilty and a clinical psychologist was called to provide evidence on behalf of the appellant. However, no evidence was led on the harm that had been caused to the children and their family.

On an appeal against sentence, the High Court made the following comment in passing, which highlights the need for evidence on the harm suffered by the complainants in a case, especially where the accused has pleaded guilty:

“There is no doubt that the appellant in this matter committed heinous crimes on vulnerable young girls who had been left in his care. The Constitution of the Republic of South Africa, 1996, entrenches the rights of children and the courts must do all in their power to protect children and those rights. The crimes were abhorrent and the learned magistrate was entirely correct to emphasise how serious they were. There was, unfortunately, no evidence led or submissions made concerning any psychological harm suffered by the children. That they have suffered psychological harm is not to be doubted. I do not know why the State did not make investigations in this regard and bring such information to the attention of the court prior to sentencing. It can only be hoped that the children and their parents have been offered psychotherapy to address this and minimise it.”

There is a duty on the prosecution to lead evidence of harm to the complainant, especially where the accused has pleaded guilty, to ensure the court is in a position to sentence appropriately.