THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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*Magwenyane v The State (*631/2025) [2026] ZASCA 149 (2 November 2026)

Today the Supreme Court of Appeal (SCA) granted an application for reconsideration in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 in respect of sentence. It refused it in respect of the convictions. The SCA set aside the sentences imposed on the applicant, substituted an effective sentence of 11 years' imprisonment antedated to 30 April 2015, and confirmed its order at the hearing on 20 August 2026 that the applicant be released from custody forthwith.

In August and September 2009, at Himeville, the applicant raped a seven-year-old girl and sexually assaulted her on two further occasions, and raped her three-year-old cousin. The families were neighbours and on good terms. He was convicted in the Pietermaritzburg Regional Court on 23 April 2015 and acquitted on four further counts. On 30 April 2015 the regional court sentenced him to 25 years' imprisonment on each of the two rape counts and ten years on each of the two sexual assault counts. It gave no direction that any of the sentences were to run concurrently, so the sentences, as recorded, amounted to 70 years' imprisonment. On appeal, the KwaZulu-Natal Division of the High Court, Pietermaritzburg, confirmed the convictions and reduced the effective sentence to 40 years. Two judges of the SCA refused special leave to appeal in February 2024, and the President of the SCA referred that decision to the Court for reconsideration.

The appeal turned on the applicant's age, which the regional court never determined. It relied on a charge sheet drawn in 2011, two years after the offences, which recorded him as 18 years old, and it sentenced him as an adult under the minimum sentencing regime in s 51 of the Criminal Law Amendment Act 105 of 1997. Before the SCA, the State produced his date of birth, 4 June 1992, and conceded that he was 17 when he committed the offences and 18 when he was arrested on 8 September 2010.

The SCA held that s 51(6) of the Criminal Law Amendment Act, read with the judgment of the Constitutional Court in Centre for Child Law v Minister for Justice and Constitutional Development, excludes the minimum sentencing regime where the offender was under 18 when the offence was committed, whatever his age at trial or sentence. The application of the Child Justice Act 75 of 2008 is a separate question, determined by the person's age when the criminal process begins. Because the applicant was 18 when arrested, that Act did not apply to him automatically, and nothing showed that the Director of Public Prosecutions had considered directing that it apply under s 4(2). The SCA rejected the State's argument that the applicant could not raise his age because his attorney had not done so at trial. A court must itself be satisfied that an accused falls within the class of persons to whom a sentencing regime applies.

The SCA found further misdirections in the judgment on sentence. The regional court held that the applicant's age was a neutral factor and, in the same judgment, that his youth was a substantial and compelling circumstance. It faulted him for not testifying about his immaturity, although the accused bears no onus to prove such circumstances, and it obtained no pre-sentence report. It said that his personal circumstances could be ignored because of the seriousness of the offences. It relied on victim impact statements it had declined to place on the record, and took into account matters such as the refurbishment of the court building and statistics that were not in evidence. It treated the absence of remorse as aggravating, when it can only mean the absence of a mitigating factor. Having found life imprisonment disproportionate, it imposed sentences which in their cumulative effect were more severe than life imprisonment. In reducing the sentence to 40 years, the High Court did not correct these errors.

Both parties asked the SCA to substitute an effective sentence of 25 years. The SCA declined, holding that the figure was the product of the same flawed process. It decided to sentence afresh rather than remit the matter, since the offences were committed 17 years ago and a pre-sentence report prepared now could not describe the offender as he was in 2015. The SCA described the offences as grave and recognised that the interests of the child complainants are of paramount importance. Weighed against this were the applicant's age at the time, his clean record and a child's capacity for change.

The substituted effective sentence of 11 years, antedated to 30 April 2015, expired on 30 April 2026. The SCA held that once the sentence on which the applicant's imprisonment rested was set aside and replaced with one already served, his continued detention had no lawful basis. It also noted that he had been in custody without interruption since 2015, had become eligible for parole consideration in about October 2020 on the substituted sentence, and was responsible for none of the delay in the case. The orders under s 50(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and s 120(4) of the Children's Act 38 of 2005 were set aside.

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