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

Date: 27 November 2026

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Vardien v The State (625/2025) [2026] ZASCA 160 (27 November 2026)

The Supreme Court of Appeal (SCA) dismissed the appeal against the decision of the full court of the Western Cape Division of the High Court, with no order as to costs.

The brief facts were as follows: In 2013 the appellant, who was 17 years old, committed two counts of rape (counts one and two) and two counts of sexual assault (counts three and four) against the same nine-year-old complainant. At the time, the complainant's mother was working and the appellant's mother provided aftercare for the complainant and her brother. It was during those aftercare periods that the appellant committed those four counts of rape and sexual assault against the complainant. The complainant did not raise alarm as she did not appreciate the wrong done to her. Later, at age 12, it dawned on the complainant that she had been raped after she attended life sciences classes. She did not report the rape. In 2021, she broke down and reported the rape after watching a movie in which a girl reported her rape to a school friend. The matter went to trial in the Regional Court for the Western Cape, sitting at Wynberg (the trial court), when the appellant was 27 years old and he was subsequently convicted of the said offences and sentenced to eight years' imprisonment in respect of each rape count and three years' imprisonment in respect of each sexual assault count. The trial court ordered the sentences imposed in respect of counts two to four to run concurrently with the sentence imposed in respect of count one. The appellant accordingly received an effective term of eight years' imprisonment. On appeal before the full court of the Western Cape Division of the High Court (the full court), the trial court sentence was confirmed.

Aggrieved by that outcome, the appellant successfully petitioned for special leave to appeal to this Court against that sentence on the basis that the trial court erred in not finding that correctional supervision in terms of s 276(1)*(h)* of the Criminal Procedure Act 51 of 1977 was an appropriate sentence. The trial court was alleged to have overemphasised the interests of the community at the expense of the appellant, who was 17 years old when he committed the offences. The State, on the other hand, argued that the trial court did not misdirect itself and that there was no basis for interference on appeal. It further contended that a sentence of correctional supervision for two counts of rape and two counts of sexual assault committed against a nine-year-old would induce a sense of shock.

The SCA held that a court of appeal may interfere with sentence only where the sentencing court committed a material misdirection or where the sentence was so disproportionate that it could properly be described as shocking, startling, or disturbingly inappropriate. Applying the principles in *S v Malgas*, this Court found no basis to interfere with the sentence imposed by the trial court.

The SCA found that although the appellant was 17 years old when the offences were committed and his youthfulness and prospects of rehabilitation had to be taken into account, those factors did not preclude the imposition of a custodial sentence. In the circumstances of the case, this Court held that imprisonment was a competent and appropriate sentence and that its imposition did not constitute a misdirection.

This Court further found that the offences were particularly serious and aggravating. The appellant had abused a position of trust within the family and committed two counts of rape and two counts of sexual assault against a nine-year old. The SCA emphasised the gravity of sexual offences against children and the broader societal scourge of sexual violence.

Accordingly, the SCA held that the sentence imposed was neither shocking nor disproportionate, that the trial court had not committed any material misdirection, and that there was no justification for appellate interference. The appeal against sentence was therefore dismissed.

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