



**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:** 13 May 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***

*Button v The State (1491/2024) [2026] ZASCA 71 (13 May 2026)*

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Today, the Supreme Court of Appeal (SCA), handed down a judgment, in which it upheld an appeal against an order granted in the Gauteng Division of the High Court, Johannesburg.

The appeal concerns an appeal against sentence in a matter concerning two counts of rape committed at a juvenile detention facility in Krugersdorp, the Bosasa Youth Centre (Bosasa). The appellant, Mr Joshua James Button was arraigned before the regional court sitting in Krugersdorp (the regional court) on two charges of rape. The rape in count one was committed on 27 June 2018, the complainant was a 15-year-old male (MVW). The rape in count two, was committed on 5 April 2019, when the appellant was 18 years old and the complainant in question was a 17-year-old male (CR).

The appellant pleaded guilty in the regional court and was sentenced to life imprisonment on count one and ten years' imprisonment on the second count with both sentences ordered to run concurrently. The sentence of life imprisonment was imposed under s 51(1) read with Part I of Schedule 2 to the Criminal Law Amendment Act 105 of 1997, primarily on the basis that the appellant was Human Immunodeficiency Virus (HIV) – positive and knew of his status when committing the offences. The regional court treated this as a significant aggravating factor. The full court dismissed the appellant's appeal against sentence.

Before the SCA, the appellant applied in terms of s 19(b) of the Superior Courts Act 10 of 2013 for leave to adduce further evidence. The application was not opposed by the State. The evidence, tendered through affidavits from employees and experts associated with Lancet Laboratories, established that the appellant is HIV – negative. According to Professor Eftyhia Vardas, a specialist Clinical Virologist, whose report and affidavit were tendered before this Court, found that it is medically impossible for a HIV-positive person to later test negative absent a stem cell transplant, which the appellant had never undergone.

The SCA found that the appellant's alleged HIV – positive status had never been medically verified. The SCA further held that the regional court had relied on hearsay statements contained in a report prepared by the probation officer, Mrs Annette Vergeer. No medical

evidence was presented to establish either that the appellant was HIV – positive at the time of the offences or that he was aware of such status. No medical evidence was placed before the regional court to establish either that the appellant was HIV – positive at the time of the offences or that he knew of such status. Nor was there medical evidence establishing that any of the complainants had contracted HIV as a result of the offences.

The SCA emphasised that where the State seeks to rely on an accused person's HIV – positive status as an aggravating factor capable of attracting a sentence of life imprisonment, reliable medical evidence is indispensable. The SCA held that courts cannot impose the gravest sentence on the basis of unverified hearsay or assumptions concerning HIV infection and transmission. The SCA stressed that the legislative framework governing sexual offences and HIV – related protections contemplate proper evidential safeguards supported by medical evidence. It also found that the Legislature in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, has infused socio- therapeutic mechanisms and clear processes for determining an accused's HIV – positive status. The Court found that the medical evidence adduced before it was reliable, prima facie true and directly material to the sentence imposed. The Court accepted the evidence and proceeded to determine the appeal.

The Court found that the regional court misdirected itself by accepting, without question, the hearsay allegation that the appellant was HIV – positive and aware of his status. That misdirection materially influenced both the regional court and the full court in concluding that no substantial and compelling circumstances existed to justify a lesser sentence.

In reassessing the sentence, the SCA considered the appellant's personal circumstances, including his youth, emotional immaturity, traumatic upbringing, history of severe physical and sexual abuse, drug dependency from an early age, lack of previous convictions and guilty plea. The SCA also noted psychiatric evidence indicating that the appellant functioned emotionally at the level of a child aged eight to nine years.

Although the SCA reaffirmed the seriousness of the offences and the devastating impact on the complainants, the Court concluded that substantial and compelling circumstances were present and that the sentence of life imprisonment was disproportionate.

Consequently, the appeal was upheld. The sentence of life imprisonment imposed on count one was set aside and replaced with a sentence of 15 years' imprisonment, ten years of which were ordered to run concurrently with the ten-year sentence imposed on count two.

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