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**IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)  
PRETORIA**

**CASE NO: A981/07**

**DATE: 4 August 2008**

In the matter between:

**CA M.**

APPLICANT

**versus**

**THE STATE**

RESPONDENT

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**JUDGMENT**

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**MAKHAFOLA, AJ:**

**INTRODUCTION:**

- [1] Two accused stood trial in the regional court of the Division of Southern Transvaal sitting in Springs on one count of robbery with aggravating circumstances and six counts of rape.
- [2] Both accuseds pleaded not guilty to all the counts. The appellant appeared as accused 2 in the court *a quo*.
- [3] He advanced an alibi explaining that he had been in the company of one Patricia Mofokeng at the grandmother's house as plea-explanation. He had been represented by counsel throughout the trial.

- [4] At the end of the trial he was convicted on count 1 robbery with aggravating circumstances, count 2: rape of the 14 year old K.M.M. and count 3: rape of the 14 year old C. M. and he was acquitted on counts 4, 5, 6 and 7. He was sentenced to 15 years imprisonment on count 1 and on counts 2 and 3 he was sentenced to 10 years imprisonment respectively.
- [5] Having failed to secure leave to appeal in the court *a quo*, he was granted leave to appeal against the sentence only on petition.
- [6] The appellant was sentenced for offences committed on 6 September 1998. The Minimum Sentence Act became operative on 13 November 1998.
- [7] The trial court missed the date of coming into operation of the Minimum Sentence Act and had in mind that it had been operative since May 1998.
- [8] The imposition of Sentence is a matter where the trial court enjoys a wide and unfettered discretion. In *RV MAPULO and OTHERS*, 1920 AD 56 at 47 the court stated the following: “The inflicting of punishment is pre-eminently a matter for the decision of the trial court.”  
See also: SV HOCKLEY 1974 (1) SA 183 (RA) at 184 E – 185 D.  
SV RUNDS 1978 (4) SA 304 (A) at 312 G.
- [9] The court should exercise a judicial discretion which is bound by judicial precedent and authority.  
**Vide:** SV JUTA 1988 (4) SA 962 (TK) at 907 D-F.
- [10] The appeal court will only interfere in a sentence of a lower court where there is a misdirection or irregularity committed during sentencing which results in prejudice to the accused or where it can be said that the sentence is inappropriate.
- [11] ***In casu*** the trial court has indeed taken into account the personal circumstances of the Appellant and had found that he was 18 years of age born on 7 October 1981 at the time of the commission of the offences but he was actually 16 years old at the time of commission of the offences. It also took the offences in a very serious light, correctly so as these offences are indeed serious. Furthermore the accused had

firearms in their possession whilst they committed the offences, which aggravated the offences.

- [12] Yet, a cumulative sentence of 35 years is shocking. In the light of the trial court thinking that the minimum sentence was applicable since May 1998 there was a misdirection. Where a misdirection was committed during sentencing the appeal court is entitled to interfere with the sentence and impose an appropriate one.
- [13] In the circumstances, I propose that the appeal should succeed and that the appropriate sentence would be to order the sentences on counts 2 and 3 to run concurrently with the sentence on count 1.
- [14] In the result, the sentences on counts 3 and 4 imposed by the trial court are set aside and the following sentence is substituted for it:
- (a) The appeal succeeds regarding sentences on counts 2 and 3;
  - (b) 8 Years of the sentences on counts 2 and 3 are to be served concurrently with the sentence on count 1 so that the effective sentence is reduced to 19 years imprisonment.
  - (c) The sentence is deemed to have been imposed on 26/11/1999.

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**MAKHAFOLA, K**  
**ACTING JUDGE OF THE HIGH COURT**

I agree, and it is so ordered

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**PRELLER, FG**  
**JUDGE OF THE HIGH COURT**

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