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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: A483/15

REPORTABLE

In the appeal between:

THE STATE Appellant

and

AR Respondent

JUDGMENT DELIVERED ON 21 JULY 2017

LE GRANGE J et WEINKOVE AJ

[1] The Respondent in this matter was charged in the Regional Court, sitting in Parow, with 2 130 counts relating to child pornography and sexual exploitation of children. He pleaded guilty to all these offences which *inter alia* included the contraventions of s 5(1) of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Assault), contraventions of s 20(1) of Act 32 of 2007 (the use of a child for the creation of child pornography) and various contraventions of s 24B (1) (a), (b) and (c) of the Films and Publications Act 65 of 1996 (the possession, creation and the importation of child pornography).

[2] Counts 4-17 attracted the prescribed minimum sentence of 10 years' imprisonment as contemplated in terms of s 51(2) (b) (i) - Part III of Schedule 2 of the Criminal Law Amendment Act 105 of 1997. The magistrate during sentence found that there were substantial and compelling circumstances to justify the imposition of a lesser sentence and took all 2 130 counts together for the purpose of sentence. A term of 8 years' imprisonment was imposed which was wholly suspended for 5 years on the ordinary conditions.

[3] The State, aggrieved at the sentence, launched an application in October 2015 for leave to appeal in terms of s 310A (1) of the Criminal Procedure Act 51 of 1977. According to the State, the imposed sentence was too lenient, inappropriate and disproportionate to the crimes committed, the interest of society and the personal circumstances of the Respondent.

[4] The salient facts underpinning the convictions, in brief, are the following. The Respondent was arrested in January 2011 and at the time was 32 years of age. He stayed with his wife and two minor children then aged 6 and 3 years old, near Durbanville. The Respondent's sister-in-law LC also stayed with them during the period 2001 to 2007. At the time in 2001, LC was still a minor.

[5] In December 2010, the Respondent went on holiday and requested his friend and neighbour, PT, to look after his house. It was during this period that PT, in order to watch movies, obtained access to the Respondent's computer. He came across some pornographic material and with shock recognized his own

minor son, JT, who at the time was 8 years old. PT also recognized two minor girls of a close friend, who at the time was 6 and 9 years old, on some of the pornographic footage. LC was also in some of the pornographic images and video recordings that he stumbled upon.

[6] PT, upon discovering the large amount of child pornographic material, immediately informed the mother of the two minor girls. The matter was reported to the police and the Respondent was arrested soon thereafter. The police then conducted a search of the Respondent's premises.

[7] A number of the Respondent's electronic devices were seized and sent for forensic examination. A large volume of child and other pornographic material was found on three of the Respondent's devices namely an Emerald desktop, an Acer laptop and a My Passport external hard drive.

[8] The Respondent initially appeared in the magistrate's court after his arrest. He was released on bail in the amount of R 1000.00. Thereafter the matter was transferred to the Regional Court for trial. It appears from the papers filed of record that the matter was struck from the Regional Court's roll in 2011 due to the charge-sheet not being be properly finalised by the Prosecution. In November 2012, the matter was re-enrolled and the Respondent was accordingly charged.

[9] In March 2014, after a number of postponements, the Respondent elected to plead guilty and was convicted on all 2130 counts. The matter was then postponed as both the Respondent and the Prosecution indicated that they would lead *viva voce* evidence regarding sentence.

[10] The Respondent relied on the evidence and reports compiled by Dr. Rosa Bredekamp, a counselling psychologist, and Dr. Petri van der Merwe, a psychiatrist, in mitigation of sentence. The Prosecution led the evidence of Professor Labuschagne, an investigative psychologist employed at the South African Police Services (SAPS).

[11] The Respondent was ultimately sentenced on 3 August 2015.

[12] After the State's application for leave to appeal on the sentence was successful, the matter was enrolled for hearing in March 2017.

[13] Advocate R Liddell appeared for the Respondent and Advocate Kortjie for the State. Due to the late filing of the heads of argument and the resultant condonation application by the State, the matter was postponed to 23 June 2017 for hearing as the Respondent elected to oppose the condonation sought by the State.

[14] According to the State, the delay in enrolling the matter for hearing was largely as a result of the record that was discovered being incomplete in

November 2015 by the Magistrate's Court appeals clerk. It appears from the papers filed of record that the record was incorrectly numbered; relevant exhibits were not part of the record; and the compact discs containing the offensive pornographic material that was downloaded from the Respondent's electronic devices and which forms an integral part of the charge-sheet was untraceable. According to the State it was only in late August 2016 that they succeeded in obtaining all the required documentation and exhibits to complete the record for the hearing of this appeal.

[15] The Respondent raised a number of objections to the delay in prosecuting the appeal and the manner in which the matter was enrolled for hearing. According to the Respondent, the condonation lacked in substance and should not be regarded as being available for the mere taking. It was argued on behalf of the Respondent that the condonation application by the State only relates to the late filing of its heads of argument and not for the late filing of the record. Furthermore, the State failed to properly comply with Rule 67 of the Magistrate's Court Rules which regulates criminal appeals. The complaint in this regard was that instead of filing the relevant notice of appeal on the clerk of the Regional Court, the said notice was filed on the Registrar of this Court. Furthermore, the record of appeal together with the State's notice of appeal was not placed before the presiding magistrate. The record that was placed before the magistrate was apparently the one utilized in the application for leave to appeal. It was also contended that the notice of appeal lacked in substance as it failed to set forth clearly and concisely the grounds of appeal.

In this regard, the Respondent contended that the matter should be struck from the roll, alternatively be dismissed.

[16] It is now well established in our law that the general approach to applications of this nature is that the Court has a discretion to be exercised judicially upon a consideration of all the facts and is essentially a matter of fairness to both sides. Relevant considerations will include the degree of non-compliance, the explanation therefor, the prospects of success, the importance of the case, the respondent's interest in the finality of the judgment, the convenience of the Court and the avoidance of unnecessary delay in the administration of justice. In this regard see S v Di Blasi 1996 (1) SACR 1 (A) at 3f-g. Ordinarily a consideration of the merits of the matter is essential to an adjudication of an application for condonation.

[17] The non-compliance with the Rules of this Court regarding the late filing of the record and heads of argument by the State is to be denounced. But as often observed, the rules exist for the courts and not the other way round. The court must not be governed by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. See Eke v Parsons 2016 (3) SA 37 (CC) para 39. The complaint that the record of appeal was not placed before the magistrate but only the one utilized in the application for leave to appeal, is with all respect of no moment. The magistrate on 19 October 2015 certified that the transcript was a true record of proceedings that was tried before her. It was further recorded that she had nothing further to add

regarding her reasons for conviction and sentence and that it should be accepted in consideration of the appeal. Having regard to the relevant considerations as mentioned, we do not consider that the Respondent had materially been prejudiced in this regard. The complaint that the State's notice of appeal lacked in substance is in our view without merit. The State had clearly and concisely set out the grounds of appeal and the Respondent has indeed responded thereto in some detail in his affidavit opposing the condonation application. To strike this matter from the roll would hamstring this Court in the proper administration of justice.

[18] Turning to the sentence. The main issue for consideration is whether the magistrate committed a material misdirection that warrants interference by this Court. It is trite that sentence is a matter for the discretion of the court burdened with the task of imposing the sentence. The Court of Appeal may only interfere if the reasoning by the court is vitiated by misdirection or when the sentence imposed can be said to be startlingly inappropriate or induce a sense of shock or when there is a striking disparity between the sentence imposed and the sentence the Court of Appeal would have imposed.

[19] The Respondent's personal circumstances were fully canvassed in the pre-sentence report that was compiled and testified to by Dr Bredekamp. At the time of sentencing the Respondent was 36 years' of age and married with two minor children of 9 and 6 years, respectively. He is a qualified civil engineer and in full time employment. He currently holds a very senior position at his

work. His wife at the time was also working and studied part-time towards an educational degree. The Respondent, before his arrest, lived a reasonably comfortable family life. The arrest and subsequent court proceedings, according to the pre-sentence report, had a negative impact on the Respondent's marriage and family life as his wife was oblivious of his obsession with child pornographic material.

[20] According to the Respondent, his interest in younger children was aroused when he was between the ages of 19 and 20 years' old. During that period he regularly peeped at the naked bodies of their neighbour's young daughters. In 2006, he connected to the internet and immediately gravitated towards pornographic websites, in particular those that illustrated pornographic material of young children. Graphic material of naked boys and girls of 10 years' old and younger was extremely appealing and sexually stimulating to him, although according to the Respondent there was no desire to have sexual intercourse with the children. The search for these websites would normally occur at night when his family was asleep.

[21] Between 2005 and 2006 he started to take nude pictures of LC. At that time LC was between 13 and 15 years' of age. According to the Respondent, these photographic sessions were done in secret. LC grew up in front of him, and according to the Respondent, she was not shy to expose her naked body to him. According the Respondent he thought that LC started to enjoy exposing herself to him.

[22] LC is currently an adult and since the episodes of exposing herself to the Respondent has moved on with her life. It appears she was reluctant to become involved as a witness due to her current adult life and harboured no ill-feelings towards the Respondent.

[23] The photographs taken of some of the children in particular that of the Respondent's friends or neighbours were all done without their knowledge or whilst asleep. In one instance the Respondent first withdrew the foreskin of a complainant's penis before taking pictures of his naked body. In respect of one girl, her underwear was first removed before pictures were taken of her naked body. According to the pre-sentence report, the Respondent could not provide an explanation why he decided to take nude pictures of his close friends' children whilst in his care. There were also videos taken of the Respondent's son whilst in the bath with a friend. The pictures and video material mostly concentrated on the private parts of the young friend. Similar images and video material were also taken of the other complainants. A video was also downloaded with similar images in the bath where young pre- pubescent boys were having oral sex. A number of video recordings were made of LC. In one instance she was encouraged to use her own finger to sexually stimulate herself. There were also videos where LC had to shave her genitals and do other voyeuristic deeds whilst in the bathroom.

[24] The pictures and other child pornographic material were all used by the Respondent for his own sexual gratification as the viewing thereof would normally result in him masturbating.

[25] According to the Respondent, when in front of his computer, it was like he was in his own fantasy world. The viewing of child pornography was therefore, according to the Respondent, pleasant and a stress reliever.

[26] According to Dr. Bredekamp, there was no evidence to suggest that the Respondent was using these child pornographic materials for financial gain or for trading in it in some form or the other. It appeared that the Respondent used it at times when he experienced high levels of stress and used it as a relieving and coping mechanism.

[27] Dr. Bredekamp was of the firm view that the Respondent was not a paedophile as there was no evidence of grooming or any sexual encounters with his victims which according to her was a precondition for paedophilia. She also expressed the view that the Respondent was a low risk for violent sexual offences due to the following factors: his intellect, intimacy with his wife, fixed employment, middle class life-style, no substance dependencies or personality disorders, his insight of the offences committed and the remorse shown in the present instance. It needs to be mentioned that Dr. Bredekamp did not initially view any of the pictures or videos that were the subject matter of the charges the Respondent faced, before compiling her report. It was only during cross-

examination that she was shown some of these pictures and videos. According to the Respondent's attorney at the time, the viewing of these materials by Dr Bredekamp prior to compiling her report was not feasible as it would have taken weeks if not months to do so due to the large volume thereof.

[28] Dr. Bredekamp also placed reliance on the fact that the Respondent after his initial arrest sought the assistance of Dr. M Londt, a Senior Clinical Social worker, who apparently specialized in an anti-child abuse treatment programme called Child Abuse Therapeutic and Training Services (CATTS). The reference to Dr. Londt's report was initially accepted subject to her giving *viva voce* evidence. This never materialized and the report was not part of the record.

[29] Dr. Bredekamp was further of the view that the particular child pornographic addiction coupled with the Respondent's stress induced environment could be successfully managed on a permanent basis with an appropriate community based sentence option coupled with certain suspensive conditions.

[30] The evidence of the psychiatrist, Dr. P van der Merwe was largely that the Respondent suffers from generalized anxiety and that this disorder or behaviour would ordinarily result in him trying to escape the real world by regularly feeding into child pornography. He did not express any opinion whether the Respondent is a person with paedophilia.

[31] Professor Labuschagne who testified on behalf of the State, disagreed completely with the opinion expressed by Dr. Bredekamp, and in particular in so far as she has opined that the Respondent was not a person with paedophilia. According to Professor Labuschagne, in the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (DSM-5) that was released in 2013, one of the important additions to the text on Pedophilic Disorder, [302.2 (F65.4), page 698] under the heading "*Associated Features Supporting Diagnosis"* records the following: "*The extensive use of pornography depicting prepubescent children is a useful diagnostic indicator of pedophilic disorder. This is a specific instance of the general case that individuals are likely to choose the kind of pornography that corresponds to their sexual interests."*

[32] According to Professor Labuschagne, the contention that for a person to be classified as a paedophile there must have been physical sexual contact between the offender and victim was wrong and inconsistent with the DSM-5 diagnostic manual. According to him the diagnostic criteria in the DSM-5 defines Pedophilic Disorder as follows: "*Diagnostic Criteria: (A) - Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger)*". According to Professor Labuschagne the Respondent's conduct falls squarely within this definition.

[33] The Probation officers did compile victim assessment reports and in terms of these reports the complainants, on the sexual assault counts, were unaware of what transpired. At the time the complainants were between 8 and 9 years' old. The families were good friends and or neighbours' of the Respondent, and they often visited each other. The parents of the complainants were devastated, angry and expressed their utter disgust with the Respondent for breaching their trust. Some parents refused that their children be interviewed by the Probation officers for fear of alerting them to what happened.

[34] The magistrate in her reasons for sentence, stated *inter alia* on page 308 and further of the typed record, the following:

> *"The complainant in count 1 (KV) was clearly asleep when the assault took place and she has no knowledge of the incident. Likewise the biological children of the accused as per the probation officer's report.*
>
> *The investigation was also able to identify that the offence has not impacted the wellbeing of both the R children as well as the other (V) child that is involved in this case.*
>
> *The state however did not provide any information or report indicating the impact that these offences had on (L C). Safe to say that I was provided the pictures of (L C) which he had taken and it appeared to the Court from the pictures that (L C) was although a child a willing*

participant sometimes edging the accused on to take these pictures of herself.

The child of (DT) was also asleep when the offences took place. Now the seriousness of the offence depends on the outlook of society.
Accused is a first offender, he pleaded guilty and had suffered from various psychological problems previously.

This matter has been both withdrawn and struck off the roll since the initial arrest.

In that time the accused attended a sexual offences program with Marcel Lont. He also had sessions with Petrie van der Merwe and Rosa Bredekamp.

Reports to this effect was handed in however in the light of the state's expert Dr Labuschagne the Court will make very little reference to Rosa Bredenkamp's report.

Clearly the accused is not a danger to the community. There's no evidence presented by the state that he has violent tendencies and since his arrest the accused went to seek help and is still in the process of attending programs to assist him and help him from resisting or committing offences of this type of nature.

So I'm saying that the state has not proved any kind of propensity on the part of the accused to commit offences of this nature or further offences in this regard."

[35] Child pornography is universally condemned for good reason. It strikes at the dignity of children, it is harmful to those children used in its production and it is potentially harmful because of the attitude to child sex that it fosters and the use to which it can be put in grooming children to engage in sexual conduct. See De Reuck v DPP (Witwatersrand Local Division) and Others 2003 (12) BCLR 1333 (CC) para 61. It is a violation of the right to privacy, the right to dignity and security of the person which incorporates the right of children to have their best interests considered to be of paramount importance.

[36] By promulgating this Act to deal exclusively and precisely with acts of child pornography in any form, affirms the seriousness with which the legislature, and by extension society, wants to eradicate all forms of discrimination and violence against women and children. This is in line with the State's obligation under s 28 of our Constitution which provides that the best interests of the child shall be of paramount importance.

[37] In considering an appropriate sentence the magistrate, in our view, misdirected herself in certain respects. The fact that the complainants were unaware of the nature of the sexual assault that took place upon their person purely because they were asleep can hardly be regarded as a factor that

diminishes the seriousness of the offence. In fact, the Respondent physically touched his victims. In one instance he pushed the foreskin of a victim's penis back and in the other instance removed a victim's underwear. All of this was purposely and meticulously planned for his own sexual pleasure.

[38] The same applies to the suggestion by the magistrate that LC in some of the pictures was '*a willing participant sometimes edging the accused on to take these pictures of herself'.* It seems the magistrate was of the view that the pictures and videos taken of LC had no negative impact on her as a victim and as a result is of a less serious nature. This approach by the magistrate was clearly wrong. The videos and pictures relating to LC cannot be regarded as harmless or less serious. Certain videos relate to the Respondent filming and encouraging LC to masturbate, to shave her genitals and to do other voyeuristic deeds whilst in the bathroom. The filming and taking of nude pictures of LC happened over a period of years and multiple videos were made. In our view it is incongruous to suggest that LC was a 'willing participant' in the true sense of the word. She was at the time a minor girl child who was living with the Respondent and his wife. She was pre-pubescent, fully trusted the Respondent and could have hardly appreciated the full psychological impact of her actions at the time. Common sense dictates that the Respondent must have over a period of time created a false sense of security and trust with LC. The Respondent's behaviour in this regard can hardly be described as less serious. In fact the opposite of this is more accurate. It was this false sense of trust, if not grooming which allowed LC to participate and not speak out.

[39] The bulk of this child pornographic material was accumulated by the Respondent over a number of years for his own sexual benefit. In our view the magistrate clearly underscored the seriousness of the offences and the interest of society when she stated that *"the State failed to prove any kind of propensity on the part of the Respondent to commit offences of this nature and that he is not a danger to society"*. The Respondent pleaded guilty to 2 130 counts which *inter alia* included the contraventions of s 5(1) of Act 32 of 2007 (Sexual Assault), contraventions of s 20(1) of Act 32 of 2007 (the use of a child for the creation of child pornography) and various contraventions of s 24B (1) (a), (b) and (c) of Act 65 of 1996 (the possession, creation and the importation of child pornography). Counts 4-17 attracted the prescribed minimum sentence of 10 years' imprisonment as contemplated in terms of s 51(2) of Act 105 of 1997. On the established facts there is no doubt that the Respondent has a propensity to commit these offences. Each image of child pornography in whatever form is and remains a crime-scene. In the present instance the Respondent also physically abused some of his victims whilst asleep. He was calculated and manipulative. He exploited his victims when they were at their most vulnerable. To suggest that he is not a danger to society is simply, misguided. Moreover the grouping together of all the counts for the purpose of sentence in this instance was also undesirable. Here a number of offences were committed where the elements of the crime to be proven cannot be regarded as closely connected. Our higher courts have repeatedly warned of the undesirability to

take convictions in respect of divergent counts together for the purpose of sentence. In this regard see,

S v Swart 2000 (2) SACR 566 SCA at 574 para [19] and the cases referred to therein.

[40] Having established that the magistrate committed material misdirections that warrants interference, this Court is now at liberty to consider sentence afresh.

[41] During argument Advocate Liddel repeatedly referred the Court to the relevant personal circumstances of the Respondent and that after his arrest, he voluntary submitted himself for psychotherapy and group sessions with Dr. Londt. To this end the argument was that the Respondent will benefit most for his sexual affliction under the supervision of professional help than in prison. It was contended that if there is an interference with the sentence that correctional supervision as a sentencing option be considered. It appears from the Respondent's opposing affidavit that he is to date still in group therapy for his condition.

[42] The State relied on sentences passed in some comparable cases to demonstrate that the imposed sentence was disproportionate and too lenient. According to the State, the gravity of the offences in this matter calls for a custodial sentence.

[43] In considering the sentences imposed in some comparable cases, this Court is aware that each case has its own set of unique facts and cannot serve as anything more than a rough guide to what might be an appropriate sentence in the present instance.

[44] In S v De Klerk 2010 (2) SACR 40 (KZP), the appellant who at the time was 39 years old was convicted on three counts of indecent assault on sisters aged 6, 7, and 11 years old, respectively. He pleaded guilty to all three counts and was sentenced to an effective sentence of 30 years' imprisonment. On appeal and after due consideration of comparable cases; the relevant principles pertaining to sentence; and certain experts' well - researched and reasoned evidence; the trial court's sentence was set aside and substituted with three years' correctional supervision on appropriate stringent conditions.

[45] In S v Kleinhans 2014 (2) SACR 575 (WCC), the appellant was a 74 year old well-to-do businessman who had been convicted of numerous contraventions of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, relating to the manufacture of child pornography, sexual assault and sexual grooming. The charges all related to three complainants, minor girls, whom the appellant had befriended over a period of five years. The Appellant in the court a quo was sentenced to an effective term of 15 years imprisonment. On appeal despite evidence that the Appellant would benefit from community-based treatment programme, the Court held that the seriousness of the offences required a period of imprisonment. An effective

term of four years' imprisonment was imposed with a further four years' suspended on certain conditions.

[46] More relevant to the present matter, by reason of the similar facts is the matter of S v Stevens 2007 JDR 0637 (E), in which the appellant was convicted of two counts of indecently assaulting two girls, aged 5 years and 8 counts of contravening section 27(1)(a)(i) and (ii) of the Films and Publications Act 65 of 1996 (i.e. creating and possession of child pornography). In that matter, the appellant removed the undergarments of the girls whilst they slept in order to take photographs. He took some other photographs with more active participation on their part, in certain instances placing his finger on the vagina of the young girls. Some 71 photographs were taken but were used by the appellant only for his own sexual gratification. There was no evidence that the girls suffered any physical harm, nor had they showed any serious signs of psychological harm by the time of trial. The regional magistrate sentenced the appellant to a total of eight years imprisonment of which three years were conditionally suspended. On appeal the sentence was altered to one of six years imprisonment, two of which were suspended on certain conditions.

[47] In the present instance, the Respondent is a first offender, who pleaded guilty and submitted himself to therapy under the supervision of Dr. Londt for his sexual condition. Dr. Londt was not called as an expert witness to give evidence at the trial court. It is therefore unclear to what extent and degree the Respondent's sexual condition needs therapeutic intervention. Dr.

Bredekamp's evidence was largely concerned about the Respondent's personal circumstances. At one stage she even admitted to not viewing the pornographic material prior to compiling her report.

[48] The sentencing process is, of course, not solely directed at establishing whether the offender can be rehabilitated through a non-custodial sentence. That is only one of the purposes of sentence, albeit an important one. In S v Stevens, supra, the principal argument of the appellant was that a non-custodial sentence should be imposed to allow him to receive private treatment for his sexual affliction under the supervision of his family, as such facilities are not available in prison. In rejecting this argument the court held as follows:

> *'[5] … What is offered instead is a spurious argument that a convicted sexual offender, who is admittedly a danger to society, should have the benefit of private treatment for his sexual affliction under supervision of his family simply because he might not get adequate treatment in prison. In my judgment that would disregard almost totally the seriousness of the offences he has committed and the community expectations in that regard. It is true that offences of this kind evoke strong passions and that the courts must, dispassionately, weigh up those concerns against, amongst other factors, the appellant's personal circumstances. But due regard for personal circumstances cannot mean that the nature of the offences and the community expectations in regard thereto should be disregarded. In my view the magistrate was correct in finding that a custodial sentence was appropriate in the circumstances of this matter.'*

[49] We find ourselves in agreement both with the sentiments expressed by the Court in that matter and the approach adopted.

[50] In the present instance, we are in agreement that the magistrate was correct, on a conspectus of all the evidence to have found that there were substantial and compelling circumstances present which justified a deviation from the minimum sentence applicable on counts 4-17. Notwithstanding the presence of considerable mitigating factors, principally in the form of the Respondent's personal circumstances, we consider that a non-custodial sentence would not achieve an appropriate balance between the other equally important factors namely, the seriousness of the offences and the interest of society. A non-custodial sentence would, in our view, unduly focus on the rehabilitation of the Respondent and would lessen the retribution and prevention elements of sentence, to the extent that it would bring the administration of justice into disrepute.

[51] For these reasons and taking into account all relevant factors, the imposed sentence by the magistrate of 8 years' imprisonment which was wholly suspended on certain conditions needs to be set aside and be replaced.

[52] In our view, an effective term of 10 years' imprisonment of which 2 years is conditionally suspended is a more just and equitable sentence in this matter.

[53] In the result the following order is made:

1. The appeal succeeds.
2. The sentence of 8 years' imprisonment which was wholly suspended for 5 years' on condition that the Respondent is not again found guilty of contravening Sections 5(1) and 21 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 of 2007 or Sections 1 and 24 (a), (c) and (d) of the Films and Publications Act No 65 of 1996, is set aside and replaced with the following sentence:

2 (a) Counts 1-3 are taken together for purposes of sentence and the accused is sentenced to a period of 3 years imprisonment.

(b) Counts 4-17 are taken together for purposes of sentence and the accused is sentenced to 10 years imprisonment of which 2 years is suspended for 5 years on condition that he is not again found guilty of contravening section 5(1) of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, section 20(1) of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, section 1 of the Films and Publications Act 65 of 1996, and section 24B (1)(a), (b) and (c) of the Films and Publications Act 65 of 1996 during the period of suspension.

(c) Counts 18-63 are taken together for purposes of sentence and the accused is sentenced to 8 years imprisonment.

(d) Counts 64-1776, 1778-2077 and 2079-2130 are taken together for purposes of sentence and the accused is sentenced to 8 years imprisonment.

(e) Counts 1777 and 2078 are taken together for purposes of sentence and the accused is sentenced to 8 years imprisonment.

(f) In terms of section 280(2) of the Criminal Procedure Act 51 of 1977, the terms of imprisonment set out under paragraph (a), (c), (d) and (e) are to run concurrently with that imposed under paragraph (b) in respect of counts 4-17.

(h) In terms of section 50(2) (a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 the accused's name is to be entered into the Register for Sexual Offenders.

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Le Grange, J

I agree

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Weinkove, A.J