



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: 25 May 2022

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 judgment of the Supreme Court of Appeal

Nhlapo v The State (933/2020) [2022] ZASCA 72 (25 May 2022)

Today the Supreme Court of Appeal (SCA) handed down a judgment dismissing an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether the sentence of 10 years' imprisonment imposed against the appellant for attempted murder (count 4) could be viewed in isolation from sentences ordered to run concurrently with that sentence.

The appellant was convicted in the regional court, Ermelo (Mpumalanga) of theft of a firearm (count 1), possession of a firearm and ammunition in contravention of ss 3 and 90 of the Firearms Control Act 60 of 2000 (counts 2 and 3) and attempted murder (count 4). He pleaded guilty to the first three counts and not guilty to the fourth. On 19 January 2010, he was sentenced to terms of imprisonment of three years, five years and one year respectively in respect of counts 1 to 3; and 10 years' imprisonment in respect of count 4. The sentences imposed on counts 1 to 3 were ordered to run concurrently with the sentence imposed on count 4, with the result that the effective sentence imposed was 10 years' imprisonment.

When the trial court dismissed the appellant's leave to appeal, the appellant appealed to the high court. The high court upheld the conviction and found that there was no misdirection in the sentencing of the appellant. In the SCA, this Court found that the sentence imposed in respect of count 4 concerned a crime which, with the remaining three offences committed, formed part of one criminal transaction. Accordingly, the SCA held that the trial court correctly took account of the cumulative effect of the sentences imposed in ordering that the sentence of nine years' imprisonment in respect of the first three counts be served concurrently with the sentence imposed in respect of count 4. In doing so, the SCA found that all relevant factors, including the mitigating and aggravating circumstances which existed, the appellant's prior criminal record, the seriousness of the crime committed, and society's interest were appropriately considered.

The SCA reiterated that sentencing is pre-eminently a matter for the discretion of the trial court. Since the sentence of 10 years' imprisonment arose consequent upon the trial court's proper exercise of its discretion, no interference with such sentence by this Court was warranted. It followed for these reasons that the appeal failed.

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