



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: 26 September 2023

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

Evans v The State (171/2022) [2023] ZASCA 123 (26 September 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the full bench), which dismissed an appeal against the sentence imposed by the trial court of the appellant, Ms Natasha Tanya Evans.

The appellant (accused 1 in the trial court), together with her former husband, Mr Eduan Gert Botha (accused 2 in the trial court), was charged with 60 counts of fraud, alternatively theft read with s 51(2)(a) of the Criminal Law Amendment Act 105 of 1997 (CLAA) (minimum sentence legislation). The total amount involved was R1 489 694.96. They were both convicted on all 60 counts of fraud on the basis of common purpose. In respect of the appellant, all 60 counts were taken together as one for the purposes of sentence and she was sentenced to a period of 15 years' imprisonment. No substantial and compelling circumstances were found to be present by the trial court in mitigation of sentence. In sentencing the appellant, the trial court found that the convictions of the appellant fell within the ambit of s 51(2)(a) of the CLAA.

The issue in the appeal was whether the prescribed minimum sentence applied. Central to this was whether the counts should be taken cumulatively or individually for purposes of sentence.

The SCA found that *Van der Walt v S* [2003] 2 All SA 587 (T) was a well-reasoned judgment and correctly decided by the full bench. It was applicable. In this case, not a single count exceeded the amount of R500 000 and thus the SCA found that the prescribed minimum sentence did not find application in this case.

The SCA found further that the application of the prescribed minimum sentence was a material misdirection which entitled the SCA to reconsider the sentence on appeal. Further, that it was not necessary to remit the matter to the court below for sentencing, since all the facts pertaining to sentencing were before the SCA. Notwithstanding the misdirection by the full bench, a custodial sentence was, in the SCA's view, an appropriate sentence.

Accordingly, the SCA held that the appeal against sentence succeeded. Further, the sentence imposed by the trial court was set aside and replaced with a period of eight years' imprisonment, of which five years was suspended.

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