



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 04 December 2023

Status: Immediate

The media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Andrew Barney August v The State (962/2022) [2023] ZASCA 170 (04 December 2023)

Andrew Barney August (the appellant) was convicted in the magistrates' court, Kimberley, of dealing in drugs in contravention of s 5(b) of the Drugs and Drug Trafficking Act 140 of 1992. He was sentenced for four years' imprisonment. His application for leave to appeal was refused, as was his subsequent petition to the High Court in terms of s 309C of the Criminal Procedure Act 51 of 1977 (CPA). On 10 March 2011 the Supreme Court of Appeal (SCA) granted the appellant leave to appeal from the refusal of his petition to the High Court. The appellant failed, however, to file his notice of appeal timeously, doing so only in 2022, by which time he had long since completed serving his term of imprisonment.

The appellant applied for condonation for his late noting of the appeal and also for the admission of further evidence for the purpose of his appeal.

The SCA restated the factors that are generally taken into account in determining whether it would be in the interests of justice to grant condonation. In the current matter, the Court held that because (i) the appellant did not enjoy realistic prospects of success in the appeal, (ii) his explanation for the inordinate delay was inadequate, (iii) the case lacked materiality because the appellant had already completed his sentence and (iv) the public interest in the finality of litigation (including in criminal matters) it would not be in the interest of justice to grant condonation. Condonation was refused and the appeal was consequently struck from the roll.

In reviewing the appellant's prospects of success the SCA considered the exclusionary rule in respect of evidence obtained through entrapment, as provided for in s 252A of the CPA, and also whether the evidence obtained against the appellant should be excluded in terms of s 35(5) of the Constitution. It held that the prospect of the exclusion of the evidence obtained through the use of a trap in the current case was illusory.

The Court held that the appellant's application to adduce further evidence on appeal did not satisfy the established test for such applications. It held further that the application could in any event not be entertained in terms of s 19 of the Superior Courts Act, as contended by the

appellant's counsel. The Court pointed out that the definition of 'appeal' in s 1 of the Superior Courts Act precluded the application of s 19 in a matter that is regulated by the CPA.

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