



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: 12 June 2025

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.

Nel v The State (708/2023) ZASCA 89 (12 June 2025)

Today the Supreme Court of Appeal (SCA) struck from the roll an application for reconsideration referred by Petse DP in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (Superior Courts Act).

The applicant, Mr Kobus Nel, pleaded guilty to and was convicted on 12 counts of theft of money to the value of about R3.9 million in the Specialised Commercial Crimes Court sitting in the Regional Court for the District of Gauteng, Pretoria, (the regional court). He was sentenced to an effective 15 years' imprisonment. The applicant was unsuccessful in both his application to the regional court and his petition to the Gauteng Division of the High Court, Pretoria (the high court) for leave to appeal against the sentence. The applicant therefore petitioned the SCA for special leave to appeal, in terms of s 16(1)(b) of the Superior Courts Act, which was dismissed on the grounds that no special circumstances existed meriting a further appeal to the SCA. Aggrieved by this, the applicant applied to the President of the Court in terms of s 17(2)(f) of the Superior Courts Act to reconsider the application for special leave to appeal. Petse DP granted the application for reconsideration of the Court's decision to refuse special leave and also referred the application for oral argument in terms of s 17(2)(d) of the Superior Courts Act.

The issue before the SCA was whether there were any exceptional circumstances warranting a reconsideration of the decision on petition. With reference to a number of cases, including *Cloete and Another v S and A Similar Application*, *Avniit v First Rand Bank Ltd*, and *Bidvest Protea Coin Security (Pty) Ltd v Mabena*, and *Liesching II* the SCA underscored the jurisprudence in relation to s 17(2)(f), namely that the threshold requirement of the existence of exceptional circumstances is a jurisdictional fact that has to be met first. Counsel for the applicant raised several grounds as exceptional circumstances. One of the grounds was the time spent in custody. The Court confirmed, with reference to *Radebe and Another v S* that there is no set rule in respect of the calculation of the weight to be given to the period spent by an accused awaiting trial. The SCA dealt with all the grounds raised and found that the well-reasoned and detailed judgment of the regional court magistrate could not be faulted.

In the present case, the SCA found that the factors enumerated in the guise of exceptional circumstances by the applicant, namely his previous convictions; the time spent in custody; the absence or presence of remorse; the health challenges he faces; and the proportionality of the sentence, had already been considered and rejected by the regional court, the high court and the two judges of the SCA who considered the petition. Therefore, the SCA held that there were no exceptional circumstances that permitted a reconsideration of the decision on petition.

As a result, the SCA struck the application from the roll.