



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

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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

Mkhize v The State (957/2023) [2026] ZASCA 143 (21 October 2026)

The Supreme Court of Appeal (SCA) upheld an application for reconsideration in terms of s 17(2)(f), an application for special leave to appeal and an appeal against sentence, with no order as to costs, against an order of the Free State Division of the High Court, Bloemfontein (the high court).

On 22 April 2013, the applicant, Mr Mkhize, together with his co-accused, Mr Mahlangu, were convicted and sentenced by the Regional Court, Odendaalsrus, Free State (the trial court), as follows:

- (a) Count 1 – attempted murder – 8 years' imprisonment;
- (b) Count 2 – attempted escape from custody – 5 years' imprisonment;
- (c) Count 3 – possession of unlicensed firearm – 15 years' imprisonment; and
- (d) Count 4 – possession of ammunition – 5 years' imprisonment.

In sentencing both accused, the trial court ordered only the sentences imposed in respect of counts 3 and 4 to run concurrently. It did not make a similar order in respect of counts 1 and 2. This resulted in an effective sentence of 28 years' imprisonment. Aggrieved by the trial court's decision, both Mr Mkhize and Mr Mahlangu sought leave to appeal against their convictions and sentences. Their applications for leave to appeal were dismissed by the trial court. They subsequently petitioned the Judge President of the high court and were granted leave to appeal against sentence only. The high court thereafter dismissed their appeals against sentence. Mr Mkhize petitioned the SCA for special leave to appeal, which was dismissed on 28 October 2019. He then applied to the President of the SCA for reconsideration in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act). On 25 March 2024, the President referred the matter to the Court for reconsideration and, if necessary, variation of the decision refusing special leave. The application was subsequently granted.

The principal issue before the SCA was whether the trial court had misdirected itself in failing to order that the sentences imposed in respect of counts 1 and 2 run concurrently.

The SCA found that the trial court had misdirected itself by failing to consider whether the sentences for counts 1 and 2 should run concurrently, notwithstanding that the offences were closely connected and had been committed as part of a single plan to escape from prison.

The Court reiterated that an appellate court may interfere with a sentence only where there has been a material misdirection by the trial court or where the sentence imposed is so disproportionate that it may properly be described as "shocking", "startling" or "disturbingly inappropriate". While sentencing remained primarily within the discretion of the trial court, that discretion had to be exercised judicially and with due regard to the cumulative effect of multiple sentences.

The SCA held that the offences in counts 1 and 2 were inextricably linked in time, place, purpose and intent. The trial court had failed to explain why the sentences imposed in respect of those counts should not run concurrently and had not adequately considered the overall severity of the cumulative sentence. This amounted to a material misdirection warranting appellate intervention.

The Court further found that the applicant had established exceptional circumstances justifying reconsideration under s 17(2)(f) of the Act. Accordingly, the SCA ordered that the sentences imposed in respect of counts 1 and 2 run concurrently. The effect of the order was to reduce the effective sentence for those offences to 8 years and to reduce the applicant's total effective term of imprisonment from 28 years to 23 years. The appeal was therefore upheld.