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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Ngewana v The State (321/2025) [2026] ZASCA 151 (12 November 2026)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against the refusal of the petition by the Eastern Cape Division of the High Court, Mthatha (the high court) in terms of s 309C of the Criminal Procedure Act 51 of 1977 (the CPA).

The conviction and sentence of the appellant emanate from two incidents at his home. On 26 June 2021, the appellant asked Mrs Lulama Ngewana (Mrs Ngewana), his wife, to lend him an expensive decorative mat. When she questioned the need for the item, the appellant assaulted Mrs Ngewana by grabbing her, banging her head against a wall, thrusting his finger into her nose, and forcefully pushing her against a wall, causing injury to her face.

A second incident occurred on 6 July 2021. Mrs Ngewana found the appellant assaulting an employee, Mr Sinoxolo Mbiza (Mr Mbiza), during an altercation over keys and whether a house on the property, in which Mr Mbiza lived, was locked. Despite her intervention, the appellant continued his violent assault on Mr Mbiza, repeatedly punching him until he managed to escape. When Mrs Ngewana attempted to record the incident on her cellphone, the appellant turned his aggression towards her, seized her and head-butted her with such force that the back of her head struck a windowsill.

In the Regional Division of the Eastern Cape, Butterworth (the regional court), the appellant was charged with possession of an unlicensed firearm (count 1), breach of a protection order (count 2), and assault with intent to do grievous bodily harm (counts 3 to 5). The regional court sentenced the appellant to five years' imprisonment for count 1, and 12 months each for assault common in counts 3 and 4. The regional court ordered that the sentences in the latter two counts run concurrently with the sentence in count 1, as envisaged in s 280(2) of the CPA. It, accordingly, sentenced the appellant to an effective term of five years' imprisonment. It also declared the appellant

to be unfit to possess a firearm in terms of s 103 of the Firearms Control Act 60 of 2000 (the Firearms Control Act).

The appellant applied to the regional court, in terms of s 309B of the CPA, for leave to appeal against both his convictions and the sentences. That application was refused. He thereafter petitioned the high court in terms of s 309C of the CPA. Following the dismissal of that petition, he applied to this Court for special leave to appeal, in terms of s 17(2)*(b)* of the Superior Courts Act 10 of 2013 (Superior Courts Act), against the high court's refusal to grant leave. This Court granted special leave to appeal, but only in relation to the high court's refusal to grant leave to appeal against the sentence imposed by the regional court (the Supreme Court of Appeal order).

The appellant however construed the Supreme Court of Appeal order as granting him leave to appeal against the sentence, directly to this Court. This Court held that, it has no jurisdiction to hear an appeal directly from the regional court. This Court emphasised that an order of a division of the high court dismissing a petition for leave to appeal in terms of s 309C of the CPA against a conviction and/or sentence in the regional court constitutes a 'decision' as contemplated in s 16(1)*(a)* and *(b)* of the Superior Courts Act. That order is appealable with the special leave of this Court, in terms of s 17(2)*(b)* on petition.

The question for determination in this Court, is whether the high court erred in refusing to grant the appellant leave to appeal against the sentence imposed by the regional court. Accordingly, this Court's enquiry is confined to whether there are reasonable prospects of success in the contemplated appeal, or another compelling reason for leave to be granted. It does not extend to a determination of the merits of the appeal itself.

The SCA found that the appeal against the high court's refusal to grant leave to appeal against the two sentences imposed for assault, has become academic as the appellant has already served the two 12-month sentences imposed for the assault convictions and, consequently, granting leave to appeal them would have no practical effect. Accordingly, the only sentence that remains in issue is the sentence imposed for the unlawful possession of a firearm.

Section 51(2) of the Criminal Law Amendment Act 105 of 1997 prescribes a minimum sentence of 15 years' imprisonment for a first conviction involving the unlawful possession of an automatic or semi-automatic firearm, unless substantial and compelling circumstances, as contemplated in s 51(3), justify the imposition of a lesser sentence. However, the regional court did not apply the minimum sentencing regime because the prosecution did not give notice in the charge sheet that it intended to rely on the provisions of s 51(2). The prosecution had only raised its reliance on s 51(2) for the first time, during argument, on sentence in the trial. This Court held that the regional court's decision on this aspect is sound. The Firearms Control Act prescribes a maximum sentence of 15 years' imprisonment for the unlawful possession of a semi-automatic firearm. The firearm found in the appellant's possession fell into this category.

This Court held that the regional court was, therefore, justified in rejecting the probation officer's recommendation that a non-custodial sentence of correctional supervision should be imposed. This Court held that the mere fact

that the firearm was possessed for a purpose other than the commission of a serious offence, does not absolve the appellant of the moral blameworthiness associated with its unlawful possession. The appellant provided no explanation for possession of a firearm. Instead, at the trial he unequivocally denied ever having possessed it despite evidence that it was found in a locked safe in his bedroom and had been entrusted to him for evaluating the price as he intended to buy it.

This Court found that the appellant is an educated and accomplished individual who worked in the field of education. He knew that his possession of the firearm was unlawful and was aware, even before receiving it from Mr Mafuya, that he was prohibited from possessing a firearm. In this regard, he had previously been required to surrender his licensed firearm pursuant to a domestic violence protection order. Despite this, he retained possession of the firearm for almost a month and neither evaluated it nor surrendered it to the SAPS. These are significant aggravating factors. This notwithstanding, the regional court exercised a measure of mercy by ordering that the sentence of five years' imprisonment run concurrently with the two sentences of 12 months' imprisonment imposed for the assault convictions. Against this background, the effective sentence of five years' imprisonment cannot be said to be shockingly disproportionate or inappropriate.

Accordingly, the appeal against the high court's refusal to grant leave to appeal the sentence must fail. The appellant has failed to demonstrate that there are reasonable prospects of another court reaching a different conclusion, or that any other compelling reason exists for leave to appeal to be granted.

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