



**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:** 24 MARCH 2021

**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*

*Kubheka and Another v The State (200/2020) [2021] ZASCA 25 (24 March 2021)*

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the Gauteng Division of the High Court, Johannesburg (the high court). The SCA ordered that the sentences imposed by the Regional Division, North Gauteng, Randburg (the regional court) be reinstated.

The issue before the SCA was whether the increased sentences imposed by the high court were appropriate.

On 12 October 2017, the appellants, Messrs Nhlanhla Arthur Kubheka (first appellant) and Armstrong Ngidi (second appellant) were each convicted in the regional court on one count of theft of a cellular telephone and an iPod from a motor vehicle. On 23 January 2018, the first appellant was sentenced to four years' imprisonment, of which two years were suspended for a period of five years on condition that he was not convicted of theft or any offence involving an element of dishonesty during the period of suspension. The second appellant was sentenced to four years' imprisonment. The appellants were declared unfit to possess a firearm in terms of s 103(1) of the Firearms Control Act 60 of 2000. With leave of the regional court, the appellants appealed to the high court in respect of both conviction and sentence. The high court set aside the sentences imposed by the regional court and substituted it with the increased sentences of five years and eight years direct imprisonment, respectively

The SCA held that there was no basis to interfere with the sentences imposed by the regional court and doubling the sentences of direct imprisonment by the high court was unwarranted. Taking into account the prevalence and seriousness of the offence, and that the appellants could not have been motivated by need but rather by greed, the SCA held that there was no room for concluding, as suggested on behalf of the appellants, that correctional supervision was a viable sentence. In substituting the sentences, the high court failed to show that the regional court exercised its sentencing discretion improperly or unreasonably when it imposed the sentences. The SCA found further that in fact the high court over-emphasised the seriousness of the offence, without taking due regard to comparable sentences. The individual sentences imposed by the regional court were found to be appropriate as they took into account the purpose of punishment, the personal circumstances of the accused, the nature of the offence, and the proportionality of the sentence considering the value of the goods stolen. In that regard, the sentences imposed by the regional court were reinstated.

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