



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: 1 June 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

Essop v State (Case No. 432/2020) [2021] ZASCA 66 (1 June 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal from the Gauteng Division of the High Court, Pretoria (high court) against the sentence imposed by the Regional Court for the Division of Gauteng (the trial court). The SCA confirmed the sentence imposed by the regional court.

The appellant was convicted in the trial court of 45 counts of contravening the provisions of section 24B (1) (a) of the Films and Publications Act ¹ (the Publications Act) after pleading guilty to all charges against him. The 46th count on which the appellant was convicted was kidnapping of a minor. On appeal to the high court, the appellant's appeal was dismissed, and the sentence imposed by the Magistrate was confirmed. One special leave to appeal granted by the SCA, the appellant argued in mitigation of the sentence imposed.

The majority, Dlodlo JA (Dambuza JA concurring) found that the approach adopted by the trial court was incorrect as it considered itself bound to impose the sentence imposed by the court in *Director of Public Prosecutions North Gauteng v Alberts*² and reminded the trial court that enjoys a wide discretion in determining sentence in every case as sentencing is a prerogative of a trial court. With this in mind and mindful of the fact that child pornography is a highly pervasive, noxious conduct that has been ravaging communities in this and many other countries around the world, the majority found that the

¹ The Films and Publications Act 65 of 1996.

² *Director of Public Prosecutions North Gauteng v Alberts* [2016] ZAGPPHC 495; 2016 (2) SACR 419 (GP) (30 June 2016).

offences of which the appellant was convicted resulted from the same incident and the circumstances set out a sentence of 10 years imprisonment would still have been imposed.

Goosen AJA, writing the minority judgment stated that the appeal should succeed in part, inasmuch as the effective sentence ought to be reduced. Goosen AJA expressed the view that the high court did not adequately consider whether the trial court had exercised its discretion properly and whether the sentence imposed by it was vitiated by misdirection of fact or law, stating that had it done so it would undoubtedly have noted that the trial court had not exercised a discretion at all. Due the misdirections by both high court and the trial court, Goosen AJA was of the view that the SCA was at liberty to consider an appropriate sentence and in so doing found that the sentence imposed by the trial court was not fair and proportionate and therefor accordingly uphold the appeal and sentence the appellant to a differentiated sentence for counts 1 to 44 and count 45 respectively.

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