

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

26 September 2009

STATUS: Immediate

Jaftha v The State (687/08) [2009] ZASCA 117 (25 September 2009)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today upheld an appeal against a sentence of three years' imprisonment for driving under the influence of alcohol in Montagu, Western Cape. The conviction was the appellant's third. The second offence of driving under the influence of alcohol was committed shortly before the third, and the appellant had already been convicted, though not yet sentenced, when the third offence was committed. Naturally the trial court regarded the previous convictions as seriously aggravating factors.

Although this court would not normally have interfered in this sentence, it took into account the extraordinary fact that ten years had elapsed between the date when the appellant had lodged an appeal to the Cape High Court and the date when the appellant was informed that his appeal had failed and that a warrant for his arrest had been issued. It transpired that there had been a failure of communication between the high court and the magistrates' court in Montagu. The Cape High Court granted leave to appeal to this court in 2008.

The appellant placed an affidavit before this court explaining that he had assumed in the ten year interval that his appeal against the third conviction had been successful. He had stopped drinking alcohol altogether and was rehabilitated. He and his brothers had built up a successful business together.

The State did not object to the evidence placed before the SCA, and did not counter any of the appellant's claims. It accepted that the ten year lapse of time between conviction and the appeal to this court warranted a different sentence and that imprisonment was no longer an appropriate sentence.

In the circumstances this court replaced the sentence imposed by the trial court with a sentence of a fine of R10 000 or two years' imprisonment.
