



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

From: The Registrar, Supreme Court of Appeal
Date: 31 MARCH 2010
Status: Immediate

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S Hendricks v The State

The Supreme Court of Appeal today dismissed an appeal by Mr Shaun Hendricks (the appellant) against his convictions on two drug related charges, and upheld his appeal against the sentences imposed by the Cape High Court of 8 years and 12 years respectively. It also set aside a confiscation order made against him in terms of s 18 of the Prevention of Organised Crime Act 121 of 1998 (POCA), in the amount of R150 000.00. The High Court sentenced the appellant to an effective 12 years' imprisonment.

The trial against the appellant began in 1999, some six years after his arrest during September 1993. The appellant was convicted on 19 January 2001 and sentenced on 2 January 2002. He was not incarcerated for any period. The appellant lodged his appeal in 2003. It was heard in the Cape High Court in 2006. The judgment on appeal was delivered without notice to him in 2007. The application for leave to appeal was heard in November 2008.

On appeal, the SCA held that insufficient consideration had been given, in passing sentence, to the long delay experienced by the appellant in the finalization of his appeal. The mental strain that the appellant endured over the years awaiting the outcome of his appeal could not be ignored. While ordinarily only facts that are placed before a trial court are taken into account for the purposes of sentencing, this rule is not invariable. As the circumstances the appellant found himself in were

extraordinary and exceptional following his convictions and sentences, it was possible to alter the sentences.

The appeal against the sentences on both counts was upheld. The sentences were replaced with four years' and eight years' imprisonment respectively, ordered to run concurrently.

As regards the confiscation order, the SCA examined the provisions of POCA and stated that the requirements for a confiscation order under ss 18(1) and (2) under the act were twofold, namely the benefit and the proceeds derived from the crimes. As there was no proof that the appellant had benefitted from any drug deal, the confiscation order had to be set aside.

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