



REPUBLIC OF SOUTH AFRICA

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 22 September 2010
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Samuels v The State
(262/03) [2010] ZASCA 113 (22 September 2010)

Media Statement

Today the Supreme Court of Appeal (SCA) upheld an appeal by Roschen Samuels against an effective sentence of one year's imprisonment imposed on him for being in possession of a unlicensed firearm. The appellant pleaded guilty in the Johannesburg Regional Court to a charge of having contravened s 2 of the Arms and Ammunitions Act and was sentenced to a term of imprisonment of two years. In his plea explanation he admitted that on 22 March 1999 in the Newclare area of Johannesburg he wrongfully and unlawfully had in his possession a 9mm pistol. He appealed against that sentence to the Johannesburg High Court. The high court found that the regional court had misdirected itself. It accordingly set aside the sentence and substituted for it a sentence of 18 months' imprisonment of which six months were suspended. Aggrieved by that sentence the appellant appealed further to the SCA with the leave of the high court.

At the time of the commission of the offence the appellant was a 21-year old first offender who was earning approximately R2 000 per month as a casual employee. For reasons that were not entirely clear, it had taken all of 11 years for the appeal to be heard. The SCA was of the view that the facts that served before the magistrate were insufficient to have enabled her to exercise a proper sentencing discretion and that this was the kind of matter where the

magistrate ought to have called for a pre-sentence report in order to enable her to exercise a proper judicial sentencing discretion. In the view of the SCA, it was important for sentencing courts to differentiate between those offenders who ought to be removed from society and those who although deserving of punishment should not be so removed. The SCA held that although correctional supervision may well have commended itself in this case, given the extraordinary passage of time it was no longer appropriate. It was not entirely clear to the SCA why both the high court and regional court thought that direct imprisonment was the only appropriate sentence. What seemed to weigh with both courts was the prevalence of violent crimes executed with unlicensed firearms. Whilst that consideration was deserving of and warranted appropriate recognition in the determination of an appropriate sentence, it ignored crucial evidence that the firearm had no cartridge or ammunition. The SCA took the view that the appellant was a young, evidently immature, man who had picked up and retained the discarded firearm not for any other nefarious purpose but rather out of idle curiosity. The SCA reasoned that the appellant is not ever likely to repeat what he did. Deterrence was therefore only relevant in respect of other would-be offenders. As the appellant was being punished with imprisonment to deter others who stand on a very different footing to him, namely those who make themselves guilty of violent crimes and use unlicensed firearms to achieve that end, it was difficult to resist the conclusion that the appellant was being rendered a sacrificial lamb on the altar of general deterrence. The SCA accordingly concluded that the punishment imposed was grossly disproportionate to what could be considered fair in the circumstances of the case. It accordingly set aside the sentence of imprisonment and replaced it with a fine of R6 000, payment of which was deferred until 21 March 2011.

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