



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

15 March 2011

STATUS: Immediate

BAREND STEPHANUS SMITH V THE STATE (475/10)

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 (the SCA) today upheld an appeal against a refusal to grant leave to appeal on petition.

The appellant was convicted in the Regional Court, East London, of indecent assault and kidnapping. He was sentenced to seven years' imprisonment. He applied to the trial magistrate for leave to appeal against both conviction and sentence. He was granted leave to appeal against sentence only. He then applied, by way of petition to the Judge President of the Eastern Cape High Court, Grahamstown, in terms of s 309 of the Criminal Procedure Act 51 of 1977, for leave to appeal against conviction. His petition was dismissed. With the leave of the judges who refused the petition, he appealed to the SCA against the dismissal of the petition.

The issue before the SCA was whether the appellant has reasonable prospects of success on appeal, and not the merits of the appeal. The court held that what the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that the court hearing the appeal could reasonably arrive at a conclusion different to that of the trial court. The court held that that there must be a sound, rational basis for the conclusion that there are prospects of success on appeal. The appellant's argument was that there were reasonable prospects of success on appeal because the magistrate had misdirected himself in various ways.

The SCA held, without commenting on the merits in any detail, that the alleged misdirections could be said to be sufficiently weighty to justify a conclusion that if leave to appeal was granted the appellant's prospects of success were reasonable.