



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 28 March 2011

Status: Immediate

*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*

M VAN DER WESTHUIZEN v THE STATE

1. In 2006 the appellant, Mr van der Westhuizen, a high ranking police officer, killed his three children in the presence of his wife to punish her. He shot them with his service pistol at the family home in Brackenfell, Cape Town. Hours later he tried to commit suicide, but failed. As he shot the children he explained to his wife that he did so to make her suffer the consequences of having chosen her work as a police woman above him. The choice that he referred to was his perception of her attitude.

2. His defence to the murders was that depression, anxiety and post traumatic stress disorder from which he suffered as a result of the nature and extent of his police work and the disintegration of his marriage, caused him not to be criminally responsible for what he did. This defence failed in the Western Cape High Court and failed in the Supreme Court of Appeal.

3. The Supreme Court of Appeal confirmed the finding of the high court that, at best for the appellant, his depression, anxiety and post traumatic stress disorder diminished his criminal responsibility which, in turn, justified the imposition of a lesser sentence than that

prescribed by law. The effective sentence of 24 years' imprisonment was confirmed on appeal.

4. The judgment of the Supreme Court of Appeal includes various significant decisions on criminal procedure. These include an interpretation of the requirement that a prosecutor must act impartially. Essentially the Supreme Court of Appeal decided that this does not mean that a prosecutor is obliged to play chess against him- or herself, ie call evidence which is destructive of the State case; but a prosecutor must act fairly and dispassionately.

5. The judgment also makes it clear, for the first time in relation to a criminal matter, that when an accused makes a formal admission, that admission stands and cannot be contradicted by an accused, whether by way of evidence or in argument, until there is an honest explanation why the admission was made and why the accused wishes to resile from it.

--ends--