



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

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

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

Truyens v The State (454/2010) [2011] ZASCA 110 (1 June 2011).

The Supreme Court of Appeal (SCA) upheld an appeal by Mr Johannes Hendrikus Tuyens against an effective sentence of eight years' imprisonment which the North West High Court, Mafikeng imposed upon him two years ago. Tuyens was convicted in the regional court of the theft of 48 head of cattle in contravention of section 11 of the Stock Theft Act 57 of 1959. The magistrate initially imposed a sentence of four years' imprisonment under s 276(1)(i) of the Criminal Procedure Act 51 of 1977. This meant that the appellant would have to serve a minimum period of eight months' imprisonment before being considered for placement under correctional supervision. On appeal the high court increased his sentence.

The appellant was employed as the foreman on a cattle farm and thus occupied a position of trust. The appellant is the father of four (4) children, three (3) of whom suffer from a rare condition called cystic fibrosis, which is a genetic disease that attacks the lungs. This has led to considerable medical costs which has placed the family under severe financial pressure. The court accepted that the appellant's motive for the crime was to raise money for his children's desperate medical needs. In this regard the learned magistrate accepted the criminologist's assessment that this crime was one of need and not of greed.

The SCA found that the magistrate grappled with the difficult question of what an appropriate sentence would be in the unusual circumstances of this case. The appellant's financial circumstances, the magistrate said, was not a matter that the court could do any about. And even though the magistrate expressed sympathy for the appellant's personal circumstances, especially the health needs of his children, he came to the view that a wholly suspended sentence did not commend itself. In this regard the abuse of the employer's trust

weighed heavily with him. He thus decided that a sentence of four years' direct imprisonment would be appropriate but considered that he should impose it in terms of s 276(1)(i) of the Act, so that Mr Truyens could be considered for release on correctional supervision after serving eight months.

The question before the SCA was whether the high court was correct in interfering with the sentencing magistrate's exercise of his discretion. The court held that an appeal court should only interfere with this discretion where there was a clear misdirection by the trial court or where the sentences appealed against appear to the trial court to be so startlingly or disturbingly inappropriate as to justify interference.

The SCA held that once the learned magistrate came to the view that custodial sentence was the only appropriate sentence, but that a sentence in excess of five years was not called for, he was not only entitled to apply the s 276(1)(i) sentencing option but, on clear authority from the SCA, obliged to consider whether its application was suitable. In the circumstances of this case the SCA thus found no reason to interfere with the learned magistrate's sensitive and careful reasoning and ordered the high court's sentence to be set aside and the sentence imposed by the regional magistrate to be reinstated. The effect of the judgment therefore is that Mr. Truyens may be considered for immediate release under correctional supervision.