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

**FROM** The Registrar, Supreme Court of Appeal
**DATE** 21 February 2012
**STATUS** Immediate

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

***Mashinini v The State***
**(502/11) [2012] ZASCA 1 (21 February 2012)**

## Media Statement

Today the Supreme Court of Appeal (SCA) upheld an appeal by Mr Mashinini and Mr Abolisi (the appellants) against a sentence of life imprisonment handed down by the South Gauteng Court, Johannesburg on a charge of rape. The sentence was replaced with a sentence of ten years' imprisonment, which sentence was antedated to the date when the appellants were originally sentenced.

The appellants, who were legally represented by one legal representative, were charged in the Regional Court, Nigel with one count of rape read with the provisions of s 51(2) of the Criminal Law Amendment Act 105 of 1997 (the Act). The appellants pleaded guilty to the charge and after informing the appellants that the minimum sentence legislation was applicable; the regional magistrate convicted them as charged. Proceedings were stopped and the appellants were committed to the high court for sentencing. No objection was made by the defence. The court a quo imposed a sentence of imprisonment for life in terms of s 51(1) read with Part I of Schedule 2.

In this court the main question on appeal was whether the judge acted correctly in sentencing the appellants to imprisonment for life when they had been convicted of rape read with the provisions of s 51(2) of the Act which carries a penalty of ten years' imprisonment.

The majority, Mhlantla JA, Bosielo JA concurring, held that the solution to this legal question lies in the right to a fair trial as guaranteed by s

35(3) of the Constitution. The SCA held that the State had had ample time to amend the charge to cater for the imposition of a sentence in terms of s 51(1) and had failed to do so. The court found that the misdirection, which lies in the fact that the appellants were sentenced for an offence different to the one for which they were convicted, vitiates sentence.

The court proceeded to consider the issue of sentence afresh. After taking all the mitigating and aggravating circumstances into account, the court found that this was the type of case where imprisonment for life would have been the appropriate sentence. It further held that the careless manner in which the staff in the office of the National Director of Public Prosecutions had handled the matter resulted in the fact that only a sentence of ten years' imprisonment could be imposed.

In a dissenting judgment, Ponnan JA argued that what was needed was a vigilant examination of the relevant circumstances: The appellants had been informed that the State intended to rely on the minimum sentence legislation; both appellants, who were represented, tendered pleas of guilty to the offence which the magistrate accepted after being satisfied that all the elements of the offence had been admitted; the appellants could have been under no illusion, during the sentencing phase, that the minimum sentencing provision that the State sought to invoke was that of life imprisonment; and the appellants participated in the sentencing proceedings.

Ponnan JA concluded that the appellants on appeal did not argue that they had been misled or that they would have conducted their defence differently had they been informed at the outset that they were at risk of a sentence of life imprisonment. They chose to plead guilty and also chose not to appeal against their conviction. He concluded that that he failed to see how, if the action did amount to a misdirection, why such a finding would vitiate sentence only and not the proceedings in its entirety.

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