



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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.

HUMPHREYS v THE STATE

In a case involving a collision between a minibus and a train, the Supreme Court of Appeal (SCA) today set aside multiple convictions of murder and attempted murder secured against the minibus driver, replacing the murder convictions with convictions of culpable homicide, and reducing the sentence imposed accordingly.

The case arose in the Western Cape High Court, where the appellant was charged with and convicted of ten counts of murder and four counts of attempted murder. All these charges arose from a single incident which occurred on 25 August 2010 when a minibus, driven by the appellant across a railway crossing in defiance of clear warning signals, was hit by a train on the outskirts of Cape Town. There were fourteen children in the minibus, ranging in ages between seven and sixteen years. Ten of the children were fatally injured in the collision. Four of the children survived, but suffered serious injury. The appellant was sentenced to an effective period of 20 years' imprisonment.

The appeal against the convictions succeeded in the SCA on the grounds that the State had failed to prove the element of murder described as *dolus* or intent. The SCA found that, although the appellant's conduct was voluntarily, it could not be said that he had reconciled himself with the consequences of his conduct which he subjectively foresaw. As such, the court a quo's finding of *dolus eventualis* was not justified. The SCA did, however, find that the appellant was negligent and flagrantly so. The SCA thus set aside the convictions of murder and replaced these with convictions on the alternative charges of culpable homicide. Further, on the above findings and given that our law knows no such crime as attempted culpable homicide, the four convictions of attempted murder were set aside.

The issue of sentencing raised some difficulty for the SCA. Balancing issues of community outrage, the degree of negligence of the appellant and the court's recognition of the acute loss of invaluable young lives against the personal circumstances of the appellant, the court determined a sentence of eight years as appropriate.