



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 28 March 2013
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.

Simon Peter Mugridge v The State (657/12) [2013] ZASCA 43 (28 March 2013)

The Supreme Court of Appeal (SCA) handed down judgment today in an appeal from the South Eastern Cape Local Division, Port Elizabeth (High Court). The matter concerned an appeal against convictions on counts of rape, indecent assault and crimen iniuria, as well as an appeal on sentence on the count of rape.

In 2006, the appellant was convicted in the High Court on several counts relating to his direct sexual misconduct against the complainant, a minor at the time of the commission of the offences, who is his adopted daughter. He was sentenced to an effective 15 years' imprisonment. The appellant appealed his convictions on two bases, namely that the complainant had consented to the sexual relationship, alternatively that he had been under the impression that she had consented and thus lacked the requisite intention to commit the offences concerned.

The High Court had rejected the appellant's version of the facts – namely that the complainant had misled and seduced him – and this finding was not challenged before this court. Rather, the core issue was whether the complainant had in fact consented to the sexual relationship.

This court detailed the extent of the relationship between the complainant and appellant, noting the progression of their relationship from that between an adopted daughter and her father to one of a sexual nature. In particular, the appellant's conduct in manipulating the minor complainant by according her privileges and plying her with drugs and alcohol in exchange for compliant behaviour (including increasingly intimate – and inappropriately sexual – 'favours') was highlighted. In conclusion, this court found that the appellant had effectively 'groomed' the complainant with a view towards eradicating her inhibitions and thus opening her up to the sexual relationship, to which conduct children are particularly susceptible. It is notable that this matter is **not** governed by the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and thus the statutory offence of grooming therein is of no application.

Rather, this court held that the appellant's sexual grooming of the minor complainant had vitiated her apparent consent to the sexual relationship, and thus her consent was not 'real' as required in law. Absent the complainant's consent – or any reasonable possibility that the appellant could have mistaken her compliance for consent – the appellant's convictions are confirmed and his appeal dismissed.

On the appeal against sentence, this court noted that the High Court found substantial and compelling circumstances which justified the imposition of a lesser sentence than that prescribed in the applicable minimum sentencing legislation. In finding that the appellant exploited his superiority in age, standing and familial power to manipulate the complainant, this court recognised that evidence of sexual abuse of particularly vulnerable individuals engenders the outrage it does in part due to the prevalence of sex crimes and their impact on victims and society in general. Consequently, the SCA highlighted the need to take into account the fact that the complainant was a minor, and thus an individual who is particularly vulnerable to sexual predators. In light of the governing principle of the 'best interests of the child', the 15 year sentence imposed by the High Court is confirmed. In doing so, the SCA noted that not only is there no reason to interfere with the sentence imposed, but if regard is paid to the continuous and relentless manner in which the appellant groomed the complainant into sexual conduct – and the negative effect thereof on her and her family's life – the appellant should consider himself fortunate to have been sentenced to only 15 years' imprisonment.