



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

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

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 28 September 2015  
**STATUS** Immediate

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

***Marota v The State***  
**(300/15) [2015] ZASCA 130**

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#### **MEDIA STATEMENT**

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant, and upheld an order of the Gauteng Local Division of the High Court, Johannesburg in terms of which the appellant was sentenced to an effective term of 21 years' imprisonment.

The issue before the SCA was whether the effective sentence of 21 years' imprisonment, imposed on the appellant, for the rape and abduction of the complainant was appropriate in the circumstances.

The appellant was charged in the regional court, Tembisa, Gauteng with the rape and abduction of a 14 year old girl. The charge sheet explicitly stated that the provisions of s 51 of the Criminal Law Amendment Act 105 of 1997 (the minimum sentencing legislation) applied to the count of rape.

On 20 September 2004 and despite his plea of not guilty to both counts, the appellant was convicted as charged. The regional court then stopped the proceedings and committed the appellant to the Gauteng Local Division of the High Court, Johannesburg for confirmation of the convictions and for sentencing as contemplated in s 52 of the minimum sentencing legislation. The court below was satisfied that the conviction of the accused was supportable on the evidence, however it found that substantial and compelling circumstances existed that justified a lesser sentence than the prescribed minimum sentence of life imprisonment in respect of the count of rape as the appellant was: 19 years old; a first offender and had exhibited a sense of social responsibility in that he cared for his grandmother whilst pursuing his studies. The court below, after considering the personal circumstances of the appellant, the interests of society, the nature of the crimes of which he had been

convicted, the effect and trauma of the rape itself on the complainant proceeded to impose a sentence of 20 years' imprisonment on the rape count and three years' imprisonment on the count of abduction, two years of which were ordered to run concurrently with the term of 20 years' imprisonment. In effect the appellant was sentence to 21 years' imprisonment.

The SCA held that whilst the deterrent utility of a sentence of 21 years' imprisonment over one of 20 years' imprisonment is doubtful one must, however, not lose sight of the fact that the imposition of sentence is pre-eminently a matter in the discretion of the sentencing court.

The SCA held further that in the absence of a misdirection or where the effective sentence was not disturbingly inappropriate there would be no basis to interfere with the exercise by the court below of its sentencing discretion. In light thereof the SCA found that the difference between the effective sentence imposed by the court below and 20 years' imprisonment was not sufficiently striking so as to warrant interference. The SCA stated, on the contrary, that the court below gave anxious consideration to this aspect and furnished reasons as to what moved it to impose the sentence it did. Hence the appeal against sentence was dismissed.

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