



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
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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.

***Radzilane v S
(127/15) ZASCA [2016]***

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the applicant and upheld an order of the Gauteng Division of the High Court, Pretoria.

The issue before the SCA was whether it was competent for the trial court to have imposed a new sentence pursuant to an application to enforce a suspended sentence.

The applicant pleaded guilty to one count of theft in the regional court. He admitted that he had unlawfully and intentionally, while in the employ of ABSA Bank, between 18 September 2008 and 9 October 2008, withdrawn R560 000 from the accounts of various ABSA clients. The trial court convicted the applicant on the basis of his plea and sentenced him, in terms of s 297 of the Criminal Procedure Act 51 of 1977 (the CPA), to seven years' imprisonment, wholly suspended for five years on certain conditions including that he repay the amount stolen in instalments as directed in the court order. The applicant, after making a few initial payments, defaulted on the remaining payments thereby prompting the respondent to apply to have the suspended sentence put into operation. The trial court sentenced the applicant to three years' imprisonment in terms of s 276(1)(i) of the CPA which sentence the applicant had served.

On appeal, the SCA held that the provisions of ss 297(7) and (9) circumscribed the court's power when the conditions of suspension were not met – it could enforce the suspended sentence or further suspend it. It therefore followed that as a matter of law, the trial court erred when it imposed the new sentence, entitling the respondent to the order it obtained. The SCA found that as the CPA did not

make provision for the trial court to impose a lesser sentence, the implementation of the suspended sentence would result in a harsher sentence than originally imposed or intended when the trial court imposed the new sentence and considering the fact that the applicant had already served a period of imprisonment, it would be patently unfair if he were to serve a further seven years' imprisonment.

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