



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.

***Mhlongo v The State*
(140/16) ZASCA 152 [2016]**

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellant against the order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg in terms of which the court a quo had fixed a non-parole period of 12 years in respect of the effective period of 18 years' imprisonment imposed on the appellant. The order was set aside and the matter was remitted to the court a quo for the parties to make representations on the desirability of granting an order in terms of s 276B of the Criminal Procedure Act 51 of 1977.

The issues before the SCA were (i) whether the incorrect reference to Part 2 of Schedule 2 and not Part 1 of Schedule 2 to s 51(1) of the Criminal Law Amendment Act 105 of 1997 vitiated the sentence proceedings and (ii) the application of s276B of the Criminal Procedure Act 51 of 1977.

The appellant was charged and convicted on one count of rape by the regional court and sentenced to life imprisonment. On appeal the conviction was upheld and the sentence of life imprisonment was substituted with a sentence of 18 years' imprisonment and a fixed non-parole period of 12 years in terms of s 276B of the Criminal Procedure Act 51 of 1977. The appellant contended that the State made no application to fix the non-parole period, that the appellant was not given notice and the opportunity to present argument or evidence for or against the fixing of a non-parole period.

On appeal, the SCA held that the fact that the charge sheet had a defect which was never rectified in terms of s 86(1) of the Criminal Procedure Act did not of its own vitiate the sentencing proceedings. That each case must be treated and judged on its own facts, before any decision to set aside the

proceedings can be taken. The SCA held further that on a proper interpretation of s 276B and having regard to several reported judgments of this court, s 276B must be invoked for substantial reasons and that the discretion to fix a non-parole period must not be exercised lightly, but only in exceptional circumstances which can only be established by an investigation and a consideration of salient facts and further evidence. It therefore followed that there was no justification for the court a quo to have interfered with the sentence imposed by the regional court.

The SCA also remarked that the failure on the part of the State to obtain a Victim Impact Statement (VIS) for purposes of sentence and the failure to cross appeal the sentence imposed by the court a quo was a travesty of justice. The SCA held further that legal representatives should realise their duty and roles in criminal cases, especially at the sentencing stage and the importance of the VIS in order to place all information before the court.

The SCA set aside the order of the court a quo and remitted the matter back to the court a quo for the parties to make representations in terms of s 276B of the Criminal Procedure Act 51 of 1977.

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