



## THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

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

#### **Joubert v S (642/2016) [2017] ZASCA 3 (3 March 2017)**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 3 March 2017

**Status:** Immediate

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

Today, the Supreme Court of Appeal (SCA) upheld an appeal against a judgment of the Gauteng Provincial Division of the High Court, Pretoria, concerning failure by the court to give prior notice to the appellant, of the court's intention to consider increasing his sentence.

The appellant was charged and convicted in the Nelspruit Regional Court (trial court) on 20 counts of fraud relating to false VAT claims made to the South African Revenue Service. He was sentenced to seven years' imprisonment, wholly suspended on certain conditions for a period of five years. The appellant successfully petitioned the court a quo, where leave to appeal was sought against conviction only. However, the court a quo erroneously granted leave to appeal against both conviction and sentence, and after considering the appeal, the court set aside the sentence imposed by the trial court. It replaced it with a sentence of seven years' imprisonment, of which four years were suspended for five years, on certain conditions.

On appeal to the SCA, the appellant contended that his right to a fair trial had been violated when the court a quo increased the sentence without prior notice to him of the possible increase in sentence. The SCA upheld the appeal against the sentence. It reasoned that the appellant had been materially prejudiced by the failure of the court a quo to give prior notice to the appellant of its intention to increase his sentence. This is so because had the appellant been notified of the court a quo's intention, he would have had the option of deciding whether or not to withdraw the appeal. The appellant, in this instance, had not been afforded such an opportunity.

Accordingly, the SCA remitted the matter to the court a quo, for consideration of the appeal against sentence in accordance with the guidelines set out by the Constitutional Court in *Bogaards v S* [2012] ZACC 23; 2013 (1) SACR 1 (CC).

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