



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 01 December 2017
STATUS Immediate

Msimang v The State (698/2017) [2017] ZASCA 181

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.

The SCA today upheld an appeal and set aside and substituted the decision of the South Gauteng High Court, Johannesburg.

The appellant, stood trial in the regional court, Johannesburg on three counts. The appellant was convicted on count 1 and 3 and acquitted on count 2. The trial court sentenced the appellant on count 1 (robbery with aggravating circumstances) to 20 years' imprisonment and five years in respect of count 3 (attempted murder). The effective sentence was 25 years' imprisonment.

The appellant launched an appeal against both his convictions and sentences with the leave of the court below. The convictions were confirmed but his sentence on count 3 was ordered to run concurrently with the sentence on count 1. Aggrieved by this, the appellant petitioned this Court for special leave, which was granted on 08 September 2015.

The SCA held that the trial court erred in convicting the appellant on count 3 by relying on the doctrine of common purpose, even though it was never averred in the charge sheet or proved in evidence. The conviction of the appellant on attempted murder in count 3 was set aside. The effective sentence of 20 years' imprisonment was erroneously influenced by the circumstances surrounding the conviction for attempted murder on count 3.

The SCA held further that the appellant's personal circumstances were not on their own sufficient to qualify as substantial and compelling circumstances to deviate from the prescribed minimum sentence of 15 years' imprisonment. However, the appellant spent 21 months in a correctional centre awaiting trial and that he should be credited with those years.

In the event, the SCA found a sentence of 13 years' imprisonment to be appropriate in the circumstances.