



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not reportable

Case No: 180/2018

In the matter between:

WILLEM JAKOBUS ALBERTUS

OOSTHUIZEN

THEO MARTINUS JACKSON

FIRST APPELLANT

SECOND APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Oosthuizen & another v The State* (180/2018) [2020]
ZASCA 1 (21 January 2020)

Coram: Van der Merwe, Plasket and Mbatha JJA and Tsoka and Dolamo AJJA

Heard: Disposed of without oral hearing in terms of s 19(a) of the Superior Courts Act 10 of 2013

Delivered: 21 January 2020

Summary: Correction of patent error in order.

AMENDED ORDER

On appeal from: Gauteng Division of the High Court, Pretoria, functioning as Mpumalanga Division, Middelburg (Mphalele J sitting as court of first instance):

1 The appeal succeeds.

2 The order of the court a quo is set aside and replaced with the following order:

‘(a) Both accused are found guilty of the offences of assault with intent to do grievous bodily harm (count 5) and of kidnapping (count 4).

(b) Accused 2 is found guilty of defeating the ends of justice (count 7).

(c) The accused are each sentenced to five years imprisonment on the conviction of assault with intent to do grievous bodily harm (count 5).

(d) The accused are each sentenced to 1 year imprisonment on the conviction of kidnapping (count 4).

(e) Accused 2 is sentenced to 1 year imprisonment on the conviction of defeating the ends of justice (count 7).

(f) It is ordered that the sentence in respect of count 4 is to run concurrently with the sentence imposed on (count 5).

(g) It is ordered that the sentence in respect of count 7 is to run concurrently with the sentence imposed in count 5.

(h) The sentences are antedated to 27 October 2017.’

JUDGMENT

Mbatha JA (Van der Merwe and Plasket JJA and Tsoka and Dolamo AJJA concurring):

[1] On 2 December 2019, this court made an order in this appeal. This court upheld the appeal, set aside the order of the trial court and replaced it with an order imposing substituted convictions and sentences. In terms of para (h) of the order, these sentences were antedated to 25 August 2017. The fixing of this date was an error. The intention of this court was to antedate the sentences to 27 October 2017, in keeping with s 282 of the Criminal Procedure Act 51 of 1977. In the result the error should be corrected so as to give effect to the true intention of this court. (See *Firestone SA (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) at 307D)

[2] In the result the following amended order is made:

1 The appeal succeeds.

2 The order of the court a quo is set aside and replaced with the following order:

‘(a) Both accused are found guilty of the offences of assault with intent to do grievous bodily harm (count 5) and of kidnapping (count 4).

(b) Accused 2 is found guilty of defeating the ends of justice (count 7).

(c) The accused are each sentenced to five years imprisonment on the conviction of assault with intent to do grievous bodily harm (count 5).

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(e) Accused 2 is sentenced to 1 year imprisonment on the conviction of defeating the ends of justice (count 7).

(f) It is ordered that the sentence in respect of count 4 is to run concurrently with the sentence imposed on (count 5).

(g) It is ordered that the sentence in respect of count 7 is to run concurrently with the sentence imposed in count 5.

(h) The sentences are antedated to 27 October 2017.’

Y T Mbatha
Judge of Appeal

Appearances:

For the Appellants: No appearance

For the Respondent: No appearance