THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable
Case no: 432/2020

In the matter between:

AADIEL ESSOP **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Essop v State* (Case No. 432/2020) [2021] ZASCA 66 (1 June 2021)

Coram: DAMBUZA and DLODLO JJA and GOOSEN AJA

Heard: 12 May 2021

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. It has been published on the website of the Supreme Court of Appeal and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 1 June 2021.

Summary: Criminal law – Sentence – High court on appeal erroneously stating that s 51 (3) of the Criminal Law Amendment Act 105 of 1997 applied – misdirection requiring re – consideration of trial court's approach to sentence – trial court not exercising discretion – on re – consideration of sentence finding that period of imprisonment appropriate – appeal dismissed.

ORDER

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

1 The appeal is dismissed.

2 The sentence imposed by the trial court is confirmed.

JUDGMENT

Dlodlo JA (Dambuza JA concurring):

[1] The appellant was convicted in the Regional Court for the Division of Gauteng (the trial court) of 45 counts of contravening the provisions of section 24B (1) (*a*) of the Films and Publications Act [1] (the Publications Act). The State alleged that the appellant had unlawfully possessed film, game or publication containing depictions, descriptions or scenes of child pornography or which advocated, advertised, encouraged, or promoted child pornography or sexual exploitation of children. The 46th count on which the appellant was convicted was kidnapping of a minor. The appellant pleaded guilty to all these charges. His legal representative read and handed in a statement signed by the appellant in terms of s 112 (2) of the Criminal Procedure Act[2] (the Criminal Procedure Act). The regional court magistrate (the Magistrate) considered all counts together for the purposes of sentencing and sentenced the appellant to 10 years imprisonment. The Magistrate granted the appellant leave to appeal. On 17 December 2019, the Gauteng Division of the High Court, Pretoria (high court) dismissed the appellant's appeal and confirmed the sentence imposed by the Magistrate. The appellant unsuccessfully applied for leave to appeal before the high court. However, he was granted special leave to appeal by this court.

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[1] The Films and Publications Act 65 of 1996.
[2] The Criminal Procedure Act 51 of 1977.

[2] The State led no evidence. The State accepted the appellant's plea of guilty upon the facts set out in his plea. Therein the appellant stated that on 22 June 2014 he visited the Lenasia shopping mall. En route to his residence, as he drove in the direction of Johannesburg South, he noticed the complainant at an intersection. He stopped at the traffic light and the complainant knocked on his car's window. She asked for a lift to the nearby squatter camp. He allowed her to get into his car.

[3] According to the appellant, in the car, the complainant signalled to him her preparedness to do him a favour in exchange for the lift. The appellant understood her as offering him masturbation or oral sex. He told her that he would take her to his place of residence where he would give her food and she would take a bath. She agreed. On arrival at the appellant's home, she was offered a shower and clean clothing. She accepted the offer and indeed after a shower the appellant gave her clothing belonging to his daughter to put on. She was given food to eat. The complainant offered to do the appellant a favour in exchange for what he had done for her, to which the appellant responded that he was not interested in having sexual contact with her; instead, he asked to take some photographs of her. He reached for his camera and proceeded to take photographs of the complainant. Whilst taking photographs of her he asked her to remove some of her clothing and then took photographs of parts of her body that were exposed. Thereafter, he took her back to her home and had to drive in the direction of Lenasia where he had originally picked her up.

[4] It was at the Grasmere tollgate that the appellant was stopped by the police who confronted him about the presence of the complainant in his motor vehicle. The appellant kept quiet and the complainant told the police that he had taken photographs of her when she was naked. The police searched the appellant's motor vehicle and found the camera that he had used in order to take the photographs. The police also found in the vehicle a cellphone belonging to the appellant that he had also used to take photographs of the complainant. These images were inspected by the police who thought that they were of a child pornographic nature. The appellant admitted that the images referred to in the 45 counts fully described in Schedule 1 of the charge sheet were all stored in his cellular

phone and camera. He unreservedly admitted that the images constituted child pornography for purposes of the Act as they showed bodies or parts of bodies of children younger than the age of 18 years in circumstances that amounted to sexual exploitation. He also admitted that the complainant was a female child of 13 years of age when the offences were committed.

[5] In dismissing the appeal against sentence the high court said that the appellant was convicted and sentenced to undergo 15 years imprisonment. It then referred to the provisions of s 51 (3) of the Criminal Law Amendment Act[3] (the Minimum Sentence Act), apparently, having formed the view that the sentencing regime provided for therein was applicable in this case. This was incorrect. The sentence appealed against was 10 years imprisonment which the Magistrate had imposed. This misdirection on the part of the high court enjoined this court to re-consider the sentence imposed by the Magistrate.

[6] However, the judgment of the Magistrate too had its shortcomings. Although, in passing sentence, the Magistrate referred to the appellant's personal circumstances, the mitigating evidence led on his behalf, the prevalence of sexual exploitation of young children in this country and the fact that the appellant had kidnapped the complainant, it was apparent the judgment on sentence that the Magistrate considered himself bound to impose the sentence imposed by the court in *Director of Public Prosecutions North Gauteng v Alberts*[4]. This approach was incorrect. It is trite that in our legal system trial courts enjoy a wide discretion in determining sentence in every case. Although guidance from past decisions of higher courts engenders consistency, the primary principle is that sentencing is a prerogative of a trial court. In this regard trial courts exercise a wide discretion in determining individualised punishment based on the personal circumstances of each offender, the gravity of the crime committed and public interest.[5] Therefore the magistrate's erred in so far as he considered himself bound by a sentence imposed in

[3] The Criminal Law Amendment Act 105 of 1997.
[4] *Director of Public Prosecutions North Gauteng v Alberts* [2016] ZAGPPHC 495; 2016 (2) SACR 419 (GP) (30 June 2016).
[5] *S v Zinn* 1969 2 SA 537 (A) 540G–H.

Alberts. As a result of that error this court is enjoined to consider the issue of sentence afresh.

[7] Child pornography is a highly pervasive, noxious conduct that has been ravaging communities in this and many other countries around the world. In this country this conduct is criminalised under both the Publications Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. The prohibition of child pornography in both pieces of legislation demonstrates the seriousness with which the legislature views the conduct. It is apparent from its inclusion in the Sexual Offences Act that the offence is considered as part of the sexual offences scourge that is destroying the fabric of South African communities.

[8] Although the appellant was not charged under the Sexual Offences and Related Matters Act, ss 19 and 20 of that Act are relevant as they give insight to the seriousness with which the Legislature considers child pornography. Section 19 prohibits the exposure or display of images of child pornography, or the causing of such exposure and display and s 20 prohibits the use of children for creation of child pornography.

[9] In addition, s 28(1)*(d)* of the Constitution entrenches the right of children protection from maltreatment, neglect, abuse and degradation.[6] In *De Reuck v Director of Public Prosecutions, Witwatersrand Local Division*[7] the Constitutional Court deprecated child pornography in these words:

'In determining the importance of s 27 (1) of the [Publications] Act, it is necessary to examine its objective as a whole. The purpose of the legislation is to curb child pornography, which is seen as an evil in all democratic societies. Child pornography is universally condemned for good reason. It strikes at the dignity of children, it is harmful to children who are used its production , and it is potentially harmful because of the attitude to child sex that it fosters and the use to which it can be put in grooming children to engage in sexual conduct'.

[6] Section 28 of the Constitution of the Republic of South Africa 1996.
[7] *De Reuck v Director of Public Prosecutions, Witwatersrand Local Division* 2004(1) SA 406 CC

[10] It is particularly distressing that the complainant in this case was only 12 years old at the time of the commission of the offences. The appellant exploited her obviously distressed background for his personal gratification. I have explained in paragraph 8 above that these offences are considered to fall under the rubric of sexual offences. It was submitted on behalf of the appellant that his conduct was less reprehensible than that of the appellant in *Alberts* to which the magistrate referred when passing sentence. In this case the extent of the appellant's blameworthiness was less than in *Alberts,* so it was argued. This submission was premised on Mr Albert's 144 pornographic transgressions compared to the appellant's 45. However, this argument ignored the fact that the appellant was both the creator and the consumer of pornographic material, a fact which would not have been lost to the magistrate.

[11] The Magistrate was of the view that although the appellant was a first offender his criminal conduct took off with a very serious offence. He correctly considered the graphic nature of some of the photographs, particularly the explicit exposure of the complainant's private parts, to be aggravating.

[12] It will be recalled that, apart from the 45 convictions under the Publications Act, the appellant was also convicted of kidnapping, the 46th count. Kidnaping alone is a serious offence which if punished separately could easily attract a sentence of up to seven years imprisonment.

[13] In mitigation of sentence the appellant called a clinical psychologist Ms Hurn and his ex-wife. The appellant did not himself testify in mitigating of sentence. The State led the evidence of two probation officers. Before us, an argument was presented that the appropriate sentence was one of correctional supervision which had been recommended by the probation officer(s).

[14] The trite basic principle in this regard is that a court is not bound by a recommendation in a pre-sentence report. Imposition of sentence is a judicial function. In performing this function the court takes account all recognised sentencing considerations

which include the offender's personal circumstances, the seriousness of the crime committed and the well-being of the society. Psychologists and/or psychiatrists are mostly concerned with diagnosis and rehabilitation of the individual concerned.

[15] This Court has cautioned against attaching undue weight to the well-being of the offender at the expense of the other aims of sentencing, warning that to do so distorts sentencing process and will in all likelihood result in a misdirection.[8] Whilst the offender's personal circumstances are of importance, the natural indignation of interested persons and community must find expression and recognition in the sentences imposed by the courts.

[16] The offences of which the appellant was convicted resulted from the same incident. In my assessment, for the kidnapping of the complainant and the possession of pornographic material relating to her in the circumstances set out above I would still have imposed a sentence of 10 years imprisonment.

[17] Accordingly the following order is made.

1 The appeal is dismissed.

2 The sentence imposed by the trial court is confirmed.

DLODLO D V

JUDGE OF APPEAL

[8] *S v Lister* 1993 (2) SACR 228 (A).

Goosen AJA

[18] I have had the benefit of reading the judgment of my brother Dlodlo JA. I am, however, unable to agree with the outcome. In my view the appeal should succeed in part, inasmuch as the effective sentence ought to be reduced. Whilst I agree with the approach that my brother has adopted, I consider it necessary to elucidate a few aspects regarding the high court's judgment on appeal as well as that of the trial court.

[19] My brother has summarized the facts in his judgment. It will therefore only be necessary to highlight those aspects of the evidence relevant to the sentence which I would propose as outcome of this appeal.

[20] This matter comes before this court pursuant to an order granted in terms of s 17 (2) of the Superior Courts Act, 10 of 2013. The judgment on appeal is accordingly that of the high court (per Maumela and Kollapen JJ). As is noted by Dlodlo JA, the high court misdirected itself in regard to the sentence that had been imposed by the trial court and in relation to the law applicable to such sentence.

[21] The high court correctly outlined the limited jurisdiction of an appellate court when it deals with a sentence imposed by the trial court. The high court cited the well-known passage from the judgment of this court in *S v De Jager* 1965 (2) SA (A) at p 629 where it was held:

'It would not appear to be sufficiently recognized that a Court of appeal does not have a general discretion to ameliorate the sentences of trials Courts. The matter is governed by principle. It is the trial Court which has the discretion, and a Court of appeal cannot interfere unless the discretion was not judicially exercised, that is to say unless the sentence is vitiated by irregularity or misdirection or is so severe that no reasonable court could have imposed it. In this latter regard an accepted test is whether the sentence induces a sense of shock that is to say if there is a striking disparity between the sentence passed and that which the Court of appeal would have imposed. It should therefore be recognized that appellate jurisdiction to interfere with punishment is not discretionary but, on the contrary, very limited.'

[22] What the court *a quo* was required to consider was whether the trial court had exercised its discretion properly and whether the sentence imposed by it was vitiated by misdirection of fact or law. Again, the court *a quo* was alive to this, as indicated by its reference to *S v Pillay* 1977 (4) SA 531 (A) at p 535E-F, where Trollip JA said,

'Now the word "misdirection" in the present context simply means and error committed by the Court in determining or applying the facts for assessing the appropriate sentence. As the essential enquiry is an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the Court in imposing sentence exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature, degree, or seriousness that it shows, directly or inferentially, that the Court did not exercise its discretion at all or exercised it improperly or unreasonably. Such misdirection is usually and conveniently termed one that vitiates the court's decision on sentence.'[9]

[23] The high court, however, failed to deal with the trial court's sentence in these terms. Had the court *a quo* approached its consideration of the trial court's sentence mindful that it was required to determine whether the trial court had exercised its discretion regarding sentence, it would undoubtedly have noted that the trial court had not exercised a discretion at all.

[24] This much appears from the trial court's judgment where the following is recorded:

'I was referred to the case of *Director of Public Prosecutions, North Gauteng*, that is the *Director of Public Prosecutions* is the appellant and the matter was sitting in North Gauteng and *Gerhardus Johannes Alberts,* that is the respondent. Case number A835/2014.[10]

This case also involves phonographic (sic) material involving children. Both cases, the offence is one, namely pornographic material involving children. SAM Bakwa J (sic), that is Honourable Judge Bakwa imposed a sentence of 10 years imprisonment. The defence has attacked this decision in argument. We have what we call in our law the [indistinct] and the precedent. The [indistinct] is binding. That is that of a high court is binding to the lower courts. This is a decision

[9] See also *Mpofu v Minister for Justice and Constitutional Development and Others* [2013] ZACC 15; 2013 (2) SACR 407 (CC).

[10] *Director of Public Prosecutions North Gauteng v Alberts* [2016] ZAGPPHC 495; 2016 (2) SACR 419 (GP).

of this division according to the precedent system it is binding on this court as a lower court. It is only where that decision or that case is distinguishable to this one. But as I have already indicated that the two cases are not distinguishable because both involve pornographic material involving children. In terms section [. . .] and therefore the case has been followed and applied.'

[25] When regard is had to the judgment in the *Alberts* matter it is all the more apparent that the trial court did not exercise a discretion. That matter involved an appeal by the prosecuting authority against a sentence of an effective five year sentence imposed for 144 counts of possession of child pornography. The sentence imposed by the trial court was one of five years for each of two sets of convictions. The sentences were ordered to be served concurrently. On appeal it was held that the sentence was, given the gravity of the matter, unduly lenient. The court accordingly altered the sentence by overturning the order that they run concurrently, thereby imposing an effective sentence of ten years imprisonment. The facts disclosed that the images involved were of a particularly gross nature, involving the depiction of scenes of sexual assault, rape and sexual violence in which the victims were very young children. The facts also disclosed that Alberts had not only accessed the material via the internet, he had gone to the extent of placing orders for particular type of images.

[26] In the light of the obvious misdirections by both the court *a quo* and the trial court, this court is at large to consider an appropriate sentence. The majority judgment, having carefully considered the nature and seriousness of the offences for which the appellant has been convicted concludes that a sentence of ten years' direct imprisonment is appropriate.

[27] I take a different view. I am in full agreement with Dlodlo JA's characterization of the serious nature of the offences and the need for the sentence to properly reflect the just abhorrence of such conduct. Two aspects of this matter manifest aggravating features which warrant due recognition in the sentence. The first is that the appellant kidnapped the child and while she was under his power took her to his home where he took the photographs of her. The second feature is related. It is that, upon the admitted

facts, he created pornographic images. This act of creating the pornographic images clearly entailed a physical interaction with the child victim. It is not hard to conceive of the trauma that must have been visited upon the child.

[28] The appellant was not charged with the offence of manufacturing or producing pornographic material. He was also not charged with an offence in terms of s 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Section 20 (1) provides as follows:

'(1) A person ("A") who unlawfully and intentionally uses a child complainant ("B"), with or without the consent of B, whether for financial or other reward, favour or compensation to B or to a third person ("C") or not—

(a) for purposes of creating, making or producing;

(b) by creating, making or producing; or

(*c*) in any manner assisting to create, make or produce,

any image, publication, depiction, description or sequence in any manner whatsoever of child pornography, is guilty of the offence of using a child for child pornography.'

[29] The offence created by this section seeks to address the egregiously harmful effects of exploitation of children for the purposes of producing pornographic material. As stated by the Constitutional Court in *De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and Others* 2003 (12) BCLR 1333 (CC) at para 61:

'Child pornography is universally condemned for good reason. It strikes at the dignity of children, it is harmful to children who are used in its production, and it is potentially harmful because of the attitude to child sex that it fosters and the use to which it can be put in grooming children to engage in sexual conduct.'

[30] This Court, in *Du Toit v The Magistrate and Others* [2016] 2 All SA 328 (SCA) at para 14, held that:

'A child compromised by a pornographer's camera has to go through life knowing that the image is probably circulating within the mass distribution network for child pornography. Because the child's actions are reduced to a recorded image, the pornography may haunt him or her long after the original recording. Citing a wealth of evidence, the *Ferber* court found that the distribution of

child pornography abused children by creating a permanent record of the child's participation. This record, in turn permitted the harm to the child to be exacerbated each time the material was circulated and led to the creation of distribution networks that fostered further exploitation. (*US v Mathews* 209 F3d 338 (4th Cir 2000)). *De Reuck* (para 64) emphasised that: 'The psychological harm to the child who was photographed is exacerbated if he or she knows that the photograph continues to circulate among viewers who use it to derive sexual satisfaction.' It follows that the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled (*New York v Ferber*).

[31] The appellant was perhaps fortunate not to be charged with an offence under s 20 (1) (*b*) of Act 32 of 2007. A conviction for the offence of using a child for child pornography as contemplated by s 20 (1), carries with it a prescribed minimum sentence of 10 years imprisonment in terms of s 51 of Act 105 of 1997 read with Part III of Schedule 2 to that Act. While the appellant is not to be punished for a crime for which he was not convicted, the circumstances under which he came to be in possession of child pornography which he had produced, are seriously aggravating of the offence of possession.

[32] This, coupled with the fact that he kidnapped the child, places the offences within the category of serious offences which, in my view, warrant direct imprisonment. I am accordingly in agreement with Dlodlo JA that a sentence of correctional supervision, as was proposed at trial, is not an appropriate sentence in the circumstances. It is to be observed that the offence of kidnapping, where it is carried out by a person in possession of a firearm, also carries a minimum sentence in terms of s 51. In such case the prescribed sentence is one of at least five years' imprisonment. Again, it must be noted that the appellant is not liable to be sentenced on that basis. Nevertheless, the sentences mentioned above give some guide as to what may be considered to be appropriate sentences.

[33] The determination of what constitutes an appropriate sentence, however, requires consideration of the peculiar personal circumstances of the appellant. It also requires due consideration of the objects of sentencing and a careful weighing of the interests of

society. The purpose of this exercise is to arrive at a sentence which is proportionate and which is fair and just.

[34] The trial court observed that the appellant is a well-educated professional man who was, at the time of the commission of the offences, married and gainfully employed. These are not factors which, to my mind, are persuasive as mitigatory factors. They are, rather, neutral inasmuch as one might rightfully expect well educated individuals to be more conscious of the seriously harmful effects of child pornography on children in particular and the society in general. One factor which does provide some mitigation is the fact that he was diagnosed as suffering a paraphilic disorder. This suggests a mental disorder which manifests as an obsessive interest in sexual gratification by observation. I am prepared to accept, on the evidence presented at trial, that the disorder gives rise to the obsession and that it is not merely a description of the obsession. For present purposes it is to be observed that the evidence presented by Ms. Hearne, the psychologist, discounts paedophilia as the underlying pathology. According to the evidence there exists a prospect of rehabilitation.

[35] It was argued that the appellant had not placed before the trial court facts which suggested remorse on his part. For this reason, little regard could be had to the prospects of rehabilitation in the absence of a genuine expression of remorse (see *S v Matyityi* [11]). It is worth noting that there are troubling features in respect of the appellant's attitude to the crimes he committed. In his plea explanation he portrayed the child as sexually suggestive. This portrayal of the child as being prepared to engage in sexual activity and the perpetrator as being 'induced' into the criminal conduct, perpetuates a narrative of victim-blaming which, all too often, underlies attempts to ameliorate the true nature of the violation at the heart of sexual and related offences.

[36] The absence of an expression of remorse is indeed a factor which militates against finding that there is a prospect that the offender will be rehabilitated during a relatively short period of imprisonment. Nevertheless, the object of imprisonment for a determinate

[11] *S v Matyityi* [2010] ZASCA 127; [2011] 2 All SA 424 (SCA); 2011 (2) SA 40 (SCA) at para 13.

period is premised upon an acceptance of the inherent value of the rehabilitative effect of imprisonment. The imposition of a period of imprisonment proceeds from the premise that the sentenced prisoner is likely, after serving the period of imprisonment, to be capable of re-integration into society. Whether that indeed occurs or whether it may occur prior to the completion of the imposed sentence, is a matter which falls within the remit of the authority charged with managing the system of incarceration as legislated. Where it is not possible to conclude that the likelihood of rapid rehabilitation is high, the sentencing court will nevertheless proceed on the basis that an appropriate period of imprisonment is likely to bring about a measure of rehabilitation which will allow for the re-integration of the offender into the community. If that were not so the very foundation of our penal system would be called into question. It must therefore be accepted that the appellant can be appropriately rehabilitated.

[37] This brings me to two final aspects which require consideration. The first concerns the format of an appropriate sentence. The trial court proceeded on the basis that it was appropriate to impose a composite or undifferentiated sentence for all of the 45 counts for which the appellant was convicted. The majority proceeds upon a similar basis. In my view the offences for which the appellant has been convicted require the imposition of separate sentences. I accept that in respect of counts 1 to 44 (the possession of forty-four images depicting child pornography) it is appropriate to consider these as one for purposes of sentence. However, in respect of the kidnapping charge a separate sentence ought to be imposed. It is an offence of a wholly different character. Although it was the basis upon which the further offences came to be committed, it requires the imposition of a separate sentence in light of the general principle that a court ought to impose separate and distinct sentences for distinct crimes.

[38] The second aspect which deserves emphasis concerns the objects of sentencing. As noted earlier the imposition of a determinate sentence proceeds upon the contemplation that the sentenced prisoner will in due course be re-integrated into society. It should therefore be determined with this in mind. A sentence also seeks to deter further criminal conduct. The deterrent purpose is directed broadly at the society by signaling

what may likely follow upon the commission of an offence. The deterrent purpose is, however, also directed at the offender. It is to meet this latter objective that a sentencing court is empowered to suspend the implementation of a sentence and to impose conditions upon which such suspension operates. These mechanisms allow the sentencing court to construct a sentence which seeks to meet all of the sentencing objectives while also maintaining a principled commitment to what is fair and just and proportionate.

[39] I do not consider the sentence imposed by the trial court to be fair and proportionate. I would accordingly uphold the appeal and sentence the appellant to a differentiated sentence for counts 1 to 44 and count 45 respectively. I would also suspend a portion of the total effective sentence in order to provide for a longer term deterrent effect operative against the appellant, and to facilitate the achievement of the rehabilitation and re-integration of the appellant into society.

[40] In the result I would order as follows:

1. The appeal is upheld in part as reflected in the order below.
2. The sentence imposed by the trial court is set aside and is replaced with the following:

‘1. In respect of counts 1 to 44 the accused is sentenced to 7 years’ imprisonment.
2. In respect of count 45 the accused is sentenced to 5 years imprisonment.
3. It is ordered that 2 years of the sentence on count 45 is to be served concurrently with the sentence on counts 1 to 44.
4. It is further ordered that 3 years of the sentence on counts 1 to 44 is suspended for a period of 5 years on condition that the accused is not convicted of an offence in terms of the Films and Publications Act 65 of 1996 and / or the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, within the period of suspension.’

GOOSEN G.

ACTING JUDGE OF APPEAL

APPEARANCES:

For the Appellant:	P Du Plessis
Instructed by:	BDK Attorneys, Johannesburg
	Honey Attorneys, Bloemfontein
For the Respondent:	PW Coetzer
Instructed by:	Director of Public Prosecution, Pretoria
	Director of Public Prosecutions, Bloemfontein