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Explanatory note

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*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

In this case the Constitutional Court considered whether a permanent stay of prosecution was appropriate where an accused's constitutional right to be tried “within a reasonable time after having been charged” had been violated.

The appellants, an advocate and an attorney in Durban, were arrested in June 1993 on charges of dealing in or possessing cocaine. They appeared in court several times for postponements. After the interim Constitution came into force in April 1994 the trial was postponed to enable the appellants to apply to the High Court for access to the police docket and to refer the constitutional validity of certain sections of the Drugs and Drug Trafficking Act to the Constitutional Court for determination. That application dragged on and in March 1995 the criminal case was struck off the roll by the district magistrate. Later that year the appellants were charged again on similar charges. They unsuccessfully applied to the Natal High Court for a stay of the prosecution claiming, among other things, that their right to be tried within a reasonable time had been infringed. The appellants then appealed to the Constitutional Court.

The Court reaffirmed that ordinarily, unless there was trial-related prejudice, a stay of prosecution was not appropriate relief for a breach of the right to be tried within a reasonable time of having been charged. The Court assumed for purposes of argument that there had been such a breach but, because there was no suggestion that the appellants’ defence to the charges had been prejudiced, the appeal was dismissed.

Applying the principles laid down in the recent Constitutional Court judgment of *Sanderson*, Justice Kriegler, with whom the other justices concurred, repeated that a permanent stay of prosecution will not ordinarily be granted in cases where no prejudice related to the trial has occurred or is likely. The appeal was accordingly dismissed. He emphasised, however, that the appellants' right to be tried within a reasonable time continued to operate throughout the trial. Although a permanent stay may be inappropriate in such cases, the right to a speedy trial was important and needed to be protected and enforced by prosecutors and judicial officers in a variety of ways. If at any stage the right is shown to have been infringed or endangered, appropriate remedies should be considered.

12 May 1998