



CONSTITUTIONAL COURT OF SOUTH AFRICA

Skhumbuzo Jerome Mthembu v The State

**CCT 115/09
[2010] ZACC 8**

Date of Judgment: 25 March 2010

MEDIA SUMMARY

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

Today the Constitutional Court delivered judgment in an application for leave to appeal against the applicant's convictions of armed robbery, illegal possession of fire-arms and illegal possession of ammunition, as well as against the effective sentence of 15 years' imprisonment in respect of these offences.

The applicant was initially convicted and sentenced on 3 October 2001 in the Vereeniging Regional Court. On appeal to the North Gauteng High Court, Pretoria, on 7 October 2002, the convictions and sentence were confirmed. Leave to appeal was refused. The applicant then petitioned the Supreme Court of Appeal, but leave to appeal was refused on 25 February 2003. The applicant was out on bail during the appeal process and should have reported to the Clerk of the Court, Vereeniging, to serve his sentence when leave to appeal was refused. He did not do so. He started serving his sentence only when he was apprehended at his home on 3 April 2009, more than six years after refusal of his petition to the Supreme Court of Appeal.

The applicant appealed to this Court against both his conviction and sentence. The applicant argued that his right to freedom and security of the person was unjustifiably infringed by the delay in execution of his sentence.

The Court dismissed the applicant's application for leave to appeal against his conviction on the basis that it did not raise a constitutional issue. As to the applicant's application for leave to appeal his sentence, the Court held that convicted persons out on bail pending

appeal or application for leave to appeal are under an obligation to ascertain the outcome of their appeal processes and to present themselves to serve their sentences if the application or appeal fails. The obligation also formed part of the applicant's bail conditions.

The Court held that, in the light of the applicant's particular circumstances and the fact that the outcome of his application was known to the relevant administrative officials, there was no reasonable excuse for him not to have ascertained the status of his application for leave to appeal. The Court however found that different considerations may conceivably apply when a person is unrepresented, indigent and uneducated. The Court also expressed concern that the applicant's case was by no means an isolated one. It also stated that the fact that persons on bail whose appeals fail are often allowed to remain free for long periods before commencing to serve their sentences, represents an unsatisfactory situation which should be investigated by the National Prosecuting Authority, court administration services and the South African Police Service.

The Court dismissed the application for leave to appeal the sentence on the basis that it bears no prospects of success.