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Explanatory Note

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*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.*

Prior to the introduction of sections 309B and 309C of the Criminal Procedure Act in May 1999 a person convicted and sentenced in a magistrates' court had an unconditional right of appeal. These sections require that such persons first obtain the leave of the magistrate and if refused the high court can be asked for leave to appeal. Mr Steyn was convicted and sentenced to a long term of imprisonment by the regional court sitting in Pretoria. His application to that court for leave to appeal and his petition to the Transvaal High Court were unsuccessful. He then approached this Court contending that the provisions infringe his right of appeal to a higher court in terms of section 35(3)(o) of the Constitution. The state's argument was that since the leave and petition procedure in respect of appeals against high court judgments had previously been found to be valid by this Court, that had to hold true in respect of magistrates' court appeals as well.

Acting Justice Madlanga, writing for a unanimous Court, held that the procedure does infringe the right of appeal, which requires that there be an informed reappraisal of the case. However, crucial material, such as the record of proceedings in the trial court and its judgment are not necessarily available to the high court when it considers a petition, nor is it compulsory for that court to hear oral argument. The high court might accordingly not be in a position to make an informed decision as to whether or not leave to appeal should be granted. Particularly in cases where the petitioner is unrepresented, there is too great a risk under this procedure that a genuine miscarriage of justice will not be picked up. Also magistrates function under great pressure and are often faced with unrepresented accused and must contend with relatively inexperienced legal practitioners and investigating officers, rudimentary library facilities and other resource-related impediments. In such circumstances, the risk of errors leading to an injustice is substantially greater than in the high courts. This greater margin of error calls for a less restrictive appeal procedure at the level of magistrates' courts.

The state also sought to justify the procedure on the grounds that it prevented the clogging of appeal rolls and ensured that hopeless appeals did not waste valuable court time. However, the state failed to establish this. Therefore, the procedure could not be justified in terms of section 36 of the Constitution.

The court accordingly declared the procedure to be inconsistent with the Constitution and invalid. In the interests of justice and equity, however, it suspended the declaration of invalidity for a period of 6 months. The suspension was necessary to enable the state to take steps to address the impact of the number of cases that would be added to the court rolls. The relatively short period of suspension was aimed at getting government to respond quickly to the declaration of invalidity. To protect the rights of would-be appellants during this period the full trial record and reasons for the magistrate's judgment must be lodged with a petition to the high court in

certain circumstances such as where the person seeking to appeal against conviction and sentence had no legal representation or would spend a substantial period in prison.

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