



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Jonathan Zealand v Minister for Justice and Constitutional Development and
Minister of Correctional Services**

Case CCT 54/07

Medium Neutral Citation [2008] ZACC 3

Date of Judgment: 11 March 2008

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 handed down judgment in an application by Mr Jonathan Zealand for leave to appeal against the majority decision of the Supreme Court of Appeal, partially overturning the decision in his favour in the Port Elizabeth High Court. The case concerns Mr Zealand's claim for damages against the state arising out of his alleged unlawful detention in the maximum security section of St Alban's Prison in Port Elizabeth from 23 August 1999 to 9 December 2004.

On 28 September 1998, while awaiting trial on earlier and independent criminal charges of rape, murder and assault (the first case), Mr Zealand was convicted of murder and unlawful possession of a fire-arm and ammunition (the second case).

Following his conviction in the second case, he was sentenced to eighteen years in prison and was accordingly detained at St Alban's Prison. On 23 August 1999, his conviction and sentence were set aside on appeal by the full court of the Grahamstown High Court. However, due to the admitted negligence of the Registrar of the High Court, the prison authorities at St Alban's Prison were not informed of Mr Zealand's successful appeal. He continued to be kept in detention in its maximum security section block together with other convicted and sentenced prisoners. Almost five years later, on 1 July 2004, the charges against Mr Zealand in the first case were dropped. Nevertheless, he was released from St Alban's Prison only on 9 December 2004.

Mr Zealand's damages claim in the High Court was successful. The court held that his detention from 23 August 1999 until 9 December 2004 was unlawful. The Supreme Court of Appeal partially overturned that decision. It held that only part of his detention was unlawful. The majority stated that the lawfulness of his detention for the remaining period arose from the court orders authorising it, and not from the place or manner in which it was effected.

In a unanimous judgment by Langa CJ, the Court held that Mr Zealand's detention was unlawful for the entire period. Langa CJ held that to detain Mr Zealand, who was merely awaiting his trial, in a maximum security facility together with other sentenced and convicted prisoners amounted to a deprivation of freedom that was arbitrary and without just cause, in violation of section 12(1) of the Constitution. The Chief Justice emphasised the fundamental importance in the distinction in legal status between awaiting-trial prisoners and sentenced prisoners, which must always be respected by the state. Mr Zealand's status was not respected in this case, because he was subjected to harsher treatment than other awaiting-trial prisoners that was unnecessary to secure his attendance at trial. That differential treatment amounted to a form of undeserved punishment, which could not be justified by the series of magistrates' orders remanding him in custody over a period of five years.

The Court held that the unjustifiable violation of section 12(1) of the Constitution was sufficient to establish the unlawfulness of Mr Zealand's detention from 23 August 1999 until 9 December 2004 for the purposes of a claim for delictual

damages. The case will now be remitted to the High Court so that the other elements of liability, including quantum of damages can be considered.