



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Director of Public Prosecutions: Gauteng Division, Pretoria v Buthelezi (142/18) [2019] ZASCA 170 (29 November 2019)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Gauteng Division of the High Court, Pretoria (high court). The SCA set aside the high court order and substituted it with an order dismissing the appeal and confirmed the trial courts order in respect of conviction and sentence.

The appeal was brought in terms of s 311(1) of the Criminal Procedure Act 51 of 1977 (the CPA) by the Director of Public Prosecutions, Pretoria (the DPP). The appeal concerned a question of law in relation to the sentence decided in favour of the respondent. In essence question of law on appeal was whether the respondent's right to a fair trial were infringed when the trial court sentenced him to life imprisonment even though there was an error in the charge sheet.

Mr Lucky Anthony Buthelezi, the respondent, was arraigned in the Regional Court Vereeniging, Gauteng on a charge of raping a 13 year old girl. He pleaded guilty and was convicted as charged and sentenced to life imprisonment. The respondent, aggrieved by the sentence, lodged an appeal against his sentence in the high court. He contended that as an accused person he should have been informed of the applicability a minimum sentence. The respondent further submitted that due to the reference to the incorrect Act the minimum sentence was not applicable. The high court found in favour of the respondent. The high court set aside the sentence of life imprisonment and substituted it with the sentence of 15 years'

imprisonment. The high court set aside the sentence of life imprisonment on the ground that the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 were not applicable because the charge sheet referred to s 51 and schedule 2 of the Criminal Law (Sentencing) Amendment Act 38 of 2007 instead of Criminal Law Amendment Act 105 of 1997.

The SCA disagreed with the high court's finding, it found that the charge sheet was clear as to the crime the respondent was facing. Even though the charge sheet referred to the Criminal Law (Sentencing) Amendment Act 38 of 2007 which does not have a s 51 nor a Schedule 2, both the respondent and his counsel were aware that the intention was to refer to s 51(1) of the Criminal Law Amendment Act 105 of 1997. Such was evident from the questions posed by the trial court to the respondent regarding the consequences of the charge and the sentence which can be imposed in accordance with 51(1) of the Criminal Law Amendment Act 105 of 1997. The respondent answered in the affirmative that he fully understood that he can be sentenced to life imprisonment.

The SCA held that at all times the respondent was aware of the charge he was facing, which he intended to plead guilty too and that it carried a minimum sentence of life imprisonment. He confirmed to the trial court that he understood the applicability and the consequences of the minimum sentence and that it had been fully explained to him. He pleaded guilty knowing fully that if convicted, he may be sentenced to life imprisonment.

The SCA concluded that the reference to the incorrect Act, being a typographical error, could not without any prejudice to the respondent amount to a misdirection. For this reason the respondent's right to a fair trial were not infringed.

The appeal was upheld.