



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 10 November 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Vumani Oscar Ntuli v The State (1025/2022) [2023] ZASCA 150 (10 November 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Johannesburg (high court). The order of the high court was set aside and replaced with one granting leave to appeal against sentence to the high court.

The appeal revolved around an application for leave to appeal in respect of sentence only. The accused was convicted on two counts of robbery with aggravating circumstances, one of unlawful possession of a firearm and one of attempted murder, and was sentenced to an effective term of thirty years' imprisonment. In terms of s 309B of the Criminal Procedure Act 51 of 1977 (CPA) the appellant applied for leave to appeal against conviction and sentence which was refused by the magistrate in the regional court. He then petitioned the high court in terms of s 309C(2) for leave to appeal, but the petition was dismissed. The appellant applied for special leave to appeal from this Court in terms of s 16(1)(b) of the Superior Courts Act 10 of 2013, which leave was duly granted in respect of the sentence only.

This Court held that a petition for leave to appeal to the high court amounted to an appeal against refusal of leave to appeal by a court of first instance, which meant that the high court decided a matter on appeal to it. Section 16 of the Superior Courts Act provided that a decision of a Division on appeal to it, lies to this Court once special leave to appeal had been granted by this Court. The issue that had to be determined was, therefore, whether leave to appeal should have been granted by the high court and not the appeal itself. Prior to sentencing, the appellant was in custody for a period of three and a half years awaiting trial and this Court found that the magistrate committed a misdirection when she failed to take into account the time spent in custody awaiting trial during sentencing. This could have had a bearing on whether the appellant would have had reasonable prospects of succeeding upon appeal. The high court erred when it failed to grant the appellant the necessary leave to appeal.

In the result, the SCA upheld the appeal. The order of the high court was set aside and replaced with one granting leave to appeal against sentence to the high court.

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