



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: 12 December 2024

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

DPP, Limpopo v Kwindu (266/2023) [2024] ZASCA 175 (12 December 2024)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Limpopo Division of the High Court, Polokwane (the high court).

Jacob Kwindu (the respondent) was convicted in the Regional Court, Modimolle (the regional court), for two counts of rape of two eight-year-old girls. The respondent, 59 years of age, pleaded guilty to two counts of rape. The details of the offences he committed were set out in his guilty plea. The state accepted the guilty plea and the regional court was satisfied that the respondent had pleaded guilty to all the elements of the offences.

Briefly the facts are as follows: the respondent was at one of the 'spaza shops' in Rooiberg, buying bread when he met the two complainants and instructed them to accompany him to his home where he pulled out a revolver and ordered them to undress. Thereafter, he pulled down their panties, used Vaseline to lubricate their vaginas, and inserted his penis into their vaginas, one after the other, without their consent.

The regional court duly convicted the respondent of the two counts of rape and stated that children are vulnerable to abuse and that they are usually abused by those who think they can get away with it and all often do. The regional court considered the mitigating and aggravating factors, the interests of society and the interest of the complainants and concluded that there

were no substantial and compelling factors to deviate from the imposition of the minimum prescribed sentence of life imprisonment.

On appeal in the high court, the respondent abandoned his appeal against his conviction and only pursued the appeal against his sentence. The high court upheld his appeal primarily on the basis that the State had not proven the age of the complainants and set aside the sentence imposed by the regional court. The regional court replaced the sentence with eight years' imprisonment for each count and half of the sentence imposed in respect of count 2 was to run concurrently with the sentence in respect of count 1. Cumulatively, the respondent was to serve an effective sentence of 12 years' imprisonment.

Dissatisfied with the reduction of the sentence of life imprisonment, the State launched an appeal to the SCA, on a point of law, in terms of s 311 of the Criminal Procedure Act 51 of 1977 (the CPA). It provides that the State has an automatic right of appeal where the appeal is from the high court and that court sitting as a court of appeal determined the appeal in favour of the convicted person on a question of law. The respondent submitted that the question in this appeal is not a question of law but a question of fact.

In the SCA the State contended that the high court erred in finding that they had to prove the ages of the complainants even though the respondent had admitted this in his guilty plea statement. The SCA had to clarify whether an accused person who pleads guilty in terms of s 112(2) of the CPA and makes an admission in the statement regarding the age of the complainants, where age is an essential requisite for the offence so charged, absolves the State of its duty to prove the age of the complainants.

The SCA concluded that the respondent admitted the age of the complainants in his guilty plea. This was accepted by the State and, as such, this formed the factual matrix upon which the respondent was convicted and sentenced. That it is settled law that an accused person may be convicted based on the admissions made in his or her s 112(2) plea.

The SCA held that the high court misdirected itself when it approached the sentence imposed by the regional court, by merely replacing the sentence imposed and preferring a sentence it would have imposed as the regional court. The SCA held further that the fact that the respondent was at an advanced age, does not mitigate his case against a prescribed sentence, in fact, it aggravates it. The SCA upheld the appeal.

-----oOo-----