



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 13 November 2019
STATUS Immediate

Salzmann: Siegfried Ernst v The State (755/18) [2019] ZASCA (145)

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.

Today the Supreme Court of Appeal (SCA) dismissed the appellant's application for special leave to appeal against his conviction and sentence, and upheld the order of the Gauteng Division of the High Court, Johannesburg (the high court).

The appellant was indicted in the Specialised Commercial Crimes Court, Johannesburg (the SCCC) on three counts of the contravention of s 86 of the Electronic Communications and Transactions Act 25 of 2002. The appellant was convicted on two counts and sentenced to a fine or 12 months' imprisonment on count 1 and to three years' imprisonment on count 3. The appellant appealed against his conviction and sentence to the high court, which dismissed his appeal.

The appellant appealed to the SCA with leave having been granted by the high court. There were two issues for determination: whether leave to appeal to the SCA was properly granted; and whether the appeal against conviction and sentence should be granted.

Concerning leave to appeal, the Superior Courts Act 10 of 2013 came into effect during the appellant's trial in the SCCC. The SCA held that the appellant's application to appeal to the SCA constituted fresh proceedings, which only the SCA had jurisdiction to grant. With the consent of the President of the SCA, the matter was fully argued as an application for special leave, an application for condonation for the late filing of the application for special leave to appeal and, if granted, the consideration of the merits of the appeal.

Concerning the application for special leave to appeal, the SCA held that there were no special circumstances demanding the matter to be heard. Further, on the conviction, there were no reasonable prospects of success that a refusal would result in a manifest denial of justice; and, on the sentence, there was no manifest failure of justice that would occur if the appellant was obliged to serve the sentence. Therefore, the SCA granted condonation for the late filing of the application for special leave, it dismissed the application for special leave and it struck the matter from the roll.