

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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Frank Peter Zanner v The Director of Public Prosecutions, Johannesburg 107/05

In a judgment handed down today, the Supreme Court of Appeal dismissed the appeal against an order of the Johannesburg High Court refusing to grant the appellant a permanent stay against prosecution of a murder charge against him.

The appellant was initially charged with the death of a fellow employee in August 1993. However, the charge was withdrawn on the day of the trial, in January 1994, pursuant to representations made to the Attorney-General on the appellant's behalf. In 2004 the appellant became a suspect in a case involving the death of his wife. The investigating officer reinvestigated the 1993 incident and upon submitting further witnesses' statements to the DPP, a decision was taken to reopen the case. The appellant was subsequently recharged on a count of murder, in addition to the charge of his wife's murder, in April 2004.

It was contended on the appellant's behalf that he would suffer trial-related prejudice, in violation of his constitutional right to a fair trial, if the trial were allowed after a lapse of about 12 years from the date of the commission of the offence as (i) the original case docket and the investigation diary had disappeared; (ii) statements had been obtained from a minority of witnesses whose version suited the state case and other possible eyewitnesses could no longer be traced, and (iii) the quality of the available evidence

would be materially flawed as a result of the effect of the time lapse on the memories of the witnesses and the appellant.

The SCA held that in considering whether there was 'unreasonable delay' amounting to an infringement of the appellant's right to a fair trial, the issue of prejudice was decisive. On an assumption that the delay in the prosecution of the case had to be calculated from August 1993, as counsel agreed, the SCA held that the withdrawal of the charge in January 1994, which was brought about by the appellant's representations to the Attorney-General, did not carry with it a guarantee that on reconsideration at some later date, he would not be recharged. As nothing had happened in connection with the case from the withdrawal of the charge in 1994 until April 2004 issues of restricted freedom, stress, anxiety and stigma flowing from a trial did not arise.

The SCA found that the grounds relied on by the appellant were speculative and that the concerns raised would be considered by the trial court when assessing the evidence. The SCA held that in the circumstances, having regard also to the serious nature of the offence involved, the appellant had failed to establish trial-related prejudice or extraordinary circumstances which would justify the drastic remedy of a permanent stay of the criminal prosecution.