

## **MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

*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.*

### **S B Msane v The State**

The Supreme Court of Appeal (SCA) today reversed the order of the Johannesburg High Court confirming an effective four year sentence of imprisonment imposed on the appellants by the Johannesburg Regional Court.

The appellants, a sergeant and constable respectively, and attached to the Hillbrow Crime Intelligence Unit of the South African Police Services, had arrested a woman, S, after they found her in possession of 17 ecstasy tablets. After the arrest they demanded that she pay them R4 000 in return for which they would return her ecstasy tablets and drop the charge. She undertook to pay them the next day but reported the matter to the Anti Corruption Unit of the SAPS, who decided to entrap the appellants using her as bait.

As S was about to hand the money to the appellants they became suspicious when a police vehicle went past, and instructed her to follow them to another area where the handover would be done. Shortly thereafter, but before the handover, members of the Anti Corruption Unit confronted them and arrested them for extortion and being in possession of the ecstasy tablets.

The Johannesburg Regional Court convicted the appellants on two counts, extortion and the illegal possession of drugs. It sentenced them to four years' imprisonment on the extortion count and one year on the drug possession count. One year of the four was suspended on certain conditions but the sentences were to run consecutively.

On appeal to the Johannesburg High Court the extortion conviction was altered to an attempt, but the sentences were not interfered with. The SCA found that the alteration of a conviction from a completed offence to an attempt did not in itself warrant imposition of a lesser sentence. The SCA found that the facts of each case dictated what sentence was to be imposed in each case. The court ruled that it could find no misdirection regarding the sentence imposed on the attempted extortion count.

The SCA, however, considered that the two offences were committed in pursuit of one object. This, found the SCA, required that when it came to imposing sentence punishment should not be duplicated. The SCA found that both the regional and high courts had erred in not ordering that the sentences run concurrently.

The SCA thus ordered that the one year's imprisonment imposed on the drugs count be concurrently with the attempted extortion count.