

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 30 September 2008
Status: Immediate

W A L DU TOIT v THE MINISTER OF SAFETY AND SECURITY & ANOTHER

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.

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The Supreme Court of Appeal today dismissed an appeal against a judgment in the Pretoria High Court in terms of which the court a quo dismissed an application by the appellant to be reinstated as a member of the South African Police Services ('the SAPS').

The appellant used to be the National Commanding Officer: Technical Support Services with the rank of Director in the SAPS. He was convicted on four charges of murder and on 27 June 1996 he was sentenced to 15 years' imprisonment. As a result he was in terms of s 36(1) of the SAPS Act deemed to have been discharged from the SAPS. He applied for amnesty in terms of the Promotion of National Unity and Reconciliation Act ('the Amnesty Act') and when amnesty was granted to him he contended that he was entitled to be reinstated as a member of the SAPS with effect from 28 June 1996. He claimed to be entitled to such reinstatement in terms of s 20(10) of the Amnesty Act, alternatively s 36(2) of the SAPS Act further alternatively in terms of an agreement constituted by a letter of 29 December 1999 written by the then Commissioner.

In terms of s 20(10) of the Amnesty Act a conviction in respect of which amnesty had been granted 'shall be deemed to be expunged from all official documents or records and the conviction shall for all purposes be deemed not to have taken place'. The appellant submitted that the effect of this section is to undo his deemed discharge in terms of s 36(1) of the SAPS Act. The SCA dismissed this submission and held that s 20(10) does not operate retrospectively so as to undo consequences that came into effect before the granting of amnesty. It held that to interpret the section to be retroactive would probably affect many other contracts and statutory relationships to the potential detriment of people who had not committed any wrong. It seemed highly unlikely to the SCA that the legislature intended such a result in legislation aimed at improving future relationships.

Section 36(2) of the SAPS Act provides that a person who is deemed to have been discharged in terms of s 36(1) because of a conviction and sentence to imprisonment and whose conviction and sentence is set aside following an appeal or review may apply to be reinstated as a member. The appellant submitted that the section should be interpreted so as to include the deemed extinction of a conviction in terms of s 20(10) of the Amnesty Act. The SCA held that the procedure, result and object of appeal and review proceedings on the one hand and amnesty on the other hand are not analogous at all. For this reason there was no basis for finding that the legislature intended that 'appeal or review' should be interpreted so as to include amnesty.

In the letter dated the 29 December 1999 the National Commissioner of Police stated that the legal department of the SAPS was of the view that in the event of the appellant's amnesty application being successful it would follow that the appellant should not have been discharged from the SAPS and added that in such a case the appellant would naturally be reinstated in the post that he used to occupy or in a similar post acceptable to him. The SCA held that the letter did not evince an intention on the part of the National Commissioner to bind himself contractually. He was simply stating what he understood the legal position to be. It held furthermore that if the letter were to be interpreted as an offer to contract, the appellant never interpreted it as such and never accepted the offer.