



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date:

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.

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The Supreme Court of Appeal today refused an appellant the opportunity to pursue an appeal from the magistrate's court in the high court. The appellant was convicted of fraud in the magistrate's court. It was found that he defrauded his employer, Dunlop Tyres (Pty) Ltd. He allowed individuals and private businesses to make purchases on an unauthorised account with Dunlop at a 45% discount usually allowed government departments whilst they were not entitled to purchase directly from Dunlop at all. He was sentenced to five years' imprisonment in terms of s 276(1)(i) of the Criminal Procedure Act, which implies that he has to serve a minimum of 10 months' imprisonment whereafter the Commissioner of Correctional Services may, in his discretion, place him under correctional supervision. Early in December 2002, just after his conviction and sentence, the appellant instructed his attorney to lodge an appeal on his behalf and undertook to contact his attorney in regard to the appeal after the holiday season. However, he did not do so.

His attorney did file a notice of appeal on his behalf but thereafter received no further instructions and lost contact with the appellant. Because of the notice of appeal that was filed the appellant's appeal was placed on the roll of the high court for hearing during January 2006. Because of the appellant's failure to give his attorney instructions nothing was done to pursue the appeal and his appeal was struck off the roll. The appellant was then contacted during March 2006 to hand himself over in order to start serving his sentence. This jolted him to contact his attorney but he still took until June 2006 to bring an application to the high court to condone his earlier failures in relation to his appeal and to re-instate his appeal.

The high court found that the appellant's appeal was not to be re-instated primarily because of two reasons: his explanations for his failure to properly pursue his appeal and for the delay in bringing the application for condonation was very poor; and his prospects of success on appeal in relation to his conviction and sentence were equally poor. In his appeal to the Supreme Court of Appeal it was found that the high court was not wrong in its conclusion. Hence the appellant was refused the opportunity to pursue his appeal.