



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: 1 June 2009

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

On 1 June 2009 the Supreme Court of Appeal handed down judgment in *The Director of Public Prosecutions, Kwazulu-Natal v W S Ngcobo and two others* and upheld an appeal by the Director of Public Prosecutions, Kwazulu-Natal against a sentence imposed by the Pietermaritzburg High Court.

During the morning of Tuesday 26 November 2002, three young men, entered the home of Mr Andrew Scott Ferguson at 42 Rushmore Road, Hayfields, Pietermaritzburg and stabbed him at least 24 times in his chest and abdomen, causing his death. One of the young men was employed by Mr Ferguson (the deceased) as a gardener once a week. The walls of the deceased's home were blood-spattered. He sustained bruises and scratches on his left shin, extensive bruising and abrasions on his face and hands and had a knife wound on his third knuckle. The deceased also suffered a fractured sternum, multiple fractures of his

right ribs anteriorly and multiple perforations of his lung, heart and liver. The post-mortem examination revealed that the ribs on the deceased's right side were all fractured, resulting in what was described as a 'flail chest'. According to the doctor who performed the post-mortem examination, the flail chest could have been caused by someone jumping on it with considerable force. Because of the flail chest the deceased would have been unable to breathe on the right side. Photographs of the body of the deceased show his face and clothes covered in blood. The clothes of the three young men were stained with the deceased's blood. All of this indicates a fierce struggle for life by the deceased who was a 55-year old man who had taken early retirement from Telkom, a telecommunications company. His body was found later that day by his friend and neighbour, Mr John Wilson. The body was lying on its back in a passage in the house with something stuck in the mouth.

After murdering the deceased, the three young men departed with two cell phones, a video machine and compact discs containing information relating to a social club of which he was treasurer. They also took his motor vehicle which they later left in the bush. They unashamedly walked through a residential area in bloodstained clothes and told two acquaintances about what they had done.

These three men, the respondents in the appeal, were later charged with murder and robbery with aggravating circumstances. The Pietermaritzburg High Court convicted them on these charges and sentenced them to 18 years' imprisonment on the murder charge and 12 years' imprisonment on the charge of robbery with aggravating circumstances. The court ordered the sentences to run concurrently.

The Director of Public Prosecutions, aggrieved by sentences regarded as too lenient appealed to the SCA.

The SCA held that the High Court had erred by concluding that the offences were not premeditated and further by placing undue emphasis on the respondents' relative youthfulness. The first two respondents were 20 years old at the time of the commission of the offence and the third respondent was almost 22 years old. The SCA considered that the High Court had, in addition, wrongly justified a departure from the prescribed minimum sentences on the basis that it was difficult for young people to resist the temptations of a materialistic world.

The SCA described the murder as brutal and savage. It considered that not only was the sanctity of the deceased's home breached and his trust betrayed, but that he had been subjected to a painful and undignified death. The SCA stated that this kind of brutality has regrettably become too regular a feature of life in South Africa. The SCA emphasised that courts are expected to send out clear messages that such behaviour will be met with the full force and effect of the law. It held that there were no substantial and compelling circumstances justifying a departure from the statutory norm. The SCA upheld the appeal, setting aside the sentences imposed by the High Court and replacing it with the following:

- '1. In respect of the murder charge, each of the three accused is sentenced to life imprisonment.
2. In respect of the charge of robbery with aggravating circumstances each of the three accused is sentenced to 15 years' imprisonment.'