



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
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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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BRIAN FREDERICKS V THE STATE

The Supreme Court of Appeal (SCA), today, handed down a judgment upholding the appeal against sentence. The appellant had been convicted and sentenced on robbery with aggravating circumstances (firearm and knife) to 15 years' imprisonment and rape to 10 years' imprisonment. Effectively he was to serve 25 years' imprisonment.

He appealed to this court with leave of the court below. The grounds of the appeal being that the trial and court below misdirected themselves in imposing a lengthy custodial sentence on a juvenile who was 14 years and 10 months at the time of the commission of the offence. In terms of section 51 (6) of the Criminal Law Amendment Act 105 of 1997, section 51 of this Act cannot be applied in respect of an accused person who was under the age of 16 years at the time of the commission of the offence contemplated in subsection (1) and (2) of the minimum sentence Act.

In terms of section 28 (1)(g) of the Constitution Act 108 of 1996 a child (which is a person under the age of 18 years) has a right not to be detained, except as a measure of last resort, in

which case the child maybe detained only for the shortest appropriate time. It was common cause that the trial and court below misdirected themselves and therefore this court is at large to reconsider the sentence afresh. This court considered the seriousness of the offences, the personal circumstances of the appellant and the interests of society. The offences were found to be very serious given the fact that the appellant and his companions used a firearm and a knife to threaten the victims of this robbery and rape. Also that the person raped was a 15 year old girl.

This court concluded that it was at large to reconsider the sentence based on the misdirections of the trial and court below. However because of the seriousness of the offences, it came to the conclusion that a custodial sentence was the only appropriate sentence. In view of the period already served by the appellant it was necessary to shorten the period of imprisonment to give effect to the constitutional imperative in terms of section 28 (1)(g) of the Constitution. The sentences were replaced with the following:

1. 'On count 1: Robbery with aggravating circumstances, the accused is sentenced to 10 years' imprisonment.
2. On count 3: Rape, the accused is sentenced to 12 years' imprisonment.
3. It is ordered that the sentence in count 1 shall run concurrently with the sentence in count 3. The sentences are antedated to 13 December 2000 (effectively he will serve 12 years' imprisonment.) Such sentences are to be served at Drakenstein prison.'