



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: 29 September 2011  
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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**MDUDUZI NELSON MTHIMKHULU V THE STATE**

The Supreme Court of Appeal (SCA), today, handed down a judgment in the case of Mthimkhulu v the State. Upon hearing arguments from both sides, it was clear that there was consensus that the trial and high court erred. This court made an order that the appeal must succeed and replaced the sentence with the appropriate sentence of 10 years' imprisonment antedated to 29 February 2000. The court indicated that reasons for the order would follow in due course. These are the reasons. The trial court had convicted Mthimkhulu on a single count of rape but erroneously applied an incorrect section of the minimum sentence Act and sentenced him to 15 years' imprisonment.

On appeal to the High Court (Pretoria) the error was compounded by replacing the sentence imposed by the trial court with a sentence of life imprisonment because the high court was under the impression that the appellant had been convicted of multiple rapes (gang rape).

This case was obviously visited by a series of errors on questions of law and procedure. This court found that both the trial and high court misdirected themselves, consequently this court was at large to reconsider the conviction and sentence afresh.