



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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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.

Bailey v The State (454/2011) [2012] ZASCA 154 (01 October 2012)

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant against a sentence of imprisonment for life and upheld a judgment of the Eastern Cape High Court.

The appellant was convicted on his plea of guilty of the rape of his 12 year old daughter read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 (Act). This section provides that absent any substantial and compelling circumstances as contemplated by s 51(3)(a) of the Act, a sentencing court must impose life imprisonment as the minimum sentence. The full bench, by a majority of two to one held that the fact that the appellant pleaded guilty; declared his remorse; that he had been using drugs did not qualify as substantial and compelling to justify a sentence other than life imprisonment.

Regarding prospects for rehabilitation, the SCA held that no evidence had been tendered to prove that the appellant was a good candidate for rehabilitation. The SCA held that, on the contrary, the appellant's three previous convictions of theft had proven that he had the previous lenient sentences had not helped to rehabilitate him.

The SCA found further that the fact that the appellant was the father to the complainant; that he breached his parental duty of care to the complainant; that he betrayed the complainant's trust in him; that this rape is in fact incestuous, which makes it more abhorrent and repulsive;

that the complainant suffered serious and far-reaching psychological and emotional injuries made this rape heinous.

Having weighed the appellant's mitigating circumstances against the seriously aggravating features inherent in this case, the SCA found that it could not say that the full bench erred in finding that life imprisonment was the appropriate sentence as there were no substantial and compelling circumstances to justify a lesser sentence.

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