



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 29 March 2012  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Thulane Dzudzu Thwala v The State (679/2011) [2012] ZASCA 46 (29 March 2012)***

The Supreme Court of Appeal (SCA) upheld an appeal against an order of the North Gauteng High Court, Pretoria. The appellant, Thulane Dzudzu Thwala, was convicted of robbery with aggravating circumstances and with contravening s 36 read with ss 39(2) and 40 of the Arms and Ammunition Act 75 of 1969. With regard to the provisions of s 51(2) of the Criminal Law Amendment Act 105 of 1997 the trial court sentenced the appellant to 25 years' imprisonment. On appeal to the court a quo the sentence was altered to 15 years' imprisonment.

The question before the Court was whether, on the facts of this case, the invocation of the provisions of the minimum sentencing legislation infringed the appellant's right to a fair trial. The SCA found that the appellant was at no time warned that the minimum sentence legislation would be invoked. Accordingly, the Court held that this was unfair and highly prejudicial towards the appellant. As a result the Court found it necessary to interfere in light of the material misdirection committed by the trial court.

In considering an appropriate sentence the Court took into account the seriousness and prevalence of the crime, as well as the fact that the stolen property was not recovered. In regard the mitigating factors the Court took into account the age of the appellant, the fact that no violence was used and the fact that the loss suffered by the complainant was not substantial.

Accordingly, the SCA set aside the sentence of the court below and replaced it with a sentence of eight years' imprisonment.