

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 11 September 2015

STATUS Immediate

De Villiers v S [2015] ZASCA 119

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.

The Supreme Court of Appeal today upheld an appeal from the Gauteng Local Division which had confirmed a regional court's sentence of the appellant to eight years' imprisonment, three years of which were suspended. It imposed instead a sentence of three years' imprisonment from which the appellant may be placed under correctional supervision in the discretion of the Commissioner of Correctional Services or a parole board.

The appellant had pleaded guilty to numerous counts of fraud and one of money laundering. In all, she had defrauded her former employer, an attorney, of some R1.4 million, by paying money from his trust account into her personal bank accounts or those of her husband and his father. She had committed the frauds over a period from July to November 2007. At the time she had a young daughter, and in that period gave birth to a son.

When discovered she paid back what she had personally benefitted from and assets in her possession were forfeited. Her husband and his father were also charged but for some unexplained reason the charges against them were dropped. After pleading guilty, and being convicted by the Regional Court,

Johannesburg, evidence in mitigation was led. She testified that she had met her husband at a drug rehabilitation centre. Both were addicted to hard drugs. They married on leaving the centre. Her husband was employed by his father but was often not paid, and they struggled financially. She found work as an attorney's receptionist and was soon promoted to being a paralegal doing conveyancing work. She thus had access to the trust account.

She testified that she had felt under pressure from her husband and his family to support a lavish lifestyle which they could not afford, and had committed the frauds while under their influence. She nonetheless acknowledged that she knew that what she was doing was wrong and expressed remorse. In early 2009 she had moved back into her mother's home and had lived there since then with her children.

Several social workers and a psychologist filed reports on her family circumstances, and on the position of the children. There was evidence that she was the children's primary caregiver and the sole source of their financial support. Her mother was unable to care for them if she were to be incarcerated. The professional evidence was that the appellant had been rehabilitated and had found good employment at a rehabilitation centre in Johannesburg.

Despite all the evidence before the regional court as to the interests of the children, the magistrate, in sentencing, failed to take into account the genuine mitigating factors and completely ignored the children's best interests. That, the SCA held, was a grave misdirection. Equally the Full Bench of the Gauteng Local Division had ignored the decisions of the Constitutional Court that require an independent consideration of children's interests when imposing sentence on a primary caregiver.

After considering new evidence on the children's interests, admitted on appeal to it, and with the benefit of argument from the Centre for Child Law, admitted as an *amicus curiae*, the SCA considered that a short custodial sentence was warranted given the seriousness of the crime. It accordingly set aside the

sentence of eight years' imprisonment and imposed a period of three years' imprisonment from which the appellant may be placed under correctional supervision. The sentence was ordered to run after four weeks of the date of the order so that the appellant would have time to decide how best her children would be cared for and to make arrangements to that end.