



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 28 May 2015

STATUS Immediate

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

Hattingh v The State (20099/2014) [2015] ZASCA 84 (28 May 2015)

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) delivered a judgment granting special leave to the appellant in terms of s 16(1)(b) of the Superior Courts Act 10 of 2013 to appeal against the dismissal of his appeal by the Free State Division against his sentence imposed by the Bloemfontein Regional Court. It subsequently upheld the appeal.

The issue before the SCA was whether the 32 counts of fraud - where the State alleged that the prejudice suffered equalled or exceeded R500 000 - brought the convictions of the appellant on those counts within the ambit of s 51(2)(a) the Criminal Law Amendment Act 105 of 1997 (the Act). Section 51(2)(a) provides for a prescribed minimum sentence of 15 years' imprisonment for a certain category of offences listed in the schedule to the Act. This issue revolved around the precise scope of the plea of guilty as substantiated by the s 112(2) statement and further whether the evidence adduced after conviction during the sentencing stage should have been taken into account in relation to the conviction.

The appellant was convicted on his plea of guilty in the regional court, Bloemfontein, on 64 counts of fraud, one count of theft (count 65) and one count of money laundering in contravention of s 4(a) of the Prevention of Organised Crime Act 121 of 1998. The appellant, who was 36 years of age at the time of his trial, was practising as an attorney and conveyancer in Bloemfontein. Amongst his clients, he counted four local banks, namely, The Standard Bank of South Africa Ltd, First National Bank Ltd, ABSA Bank Ltd and Nedbank Ltd. The work that he received from these banks encompassed the registration of transfers of immovable property, registration of mortgage bonds in favour of the banks to secure moneys lent by the banks to their clients, cancellation of mortgage bonds and issuing money guarantees to third parties on behalf of the banks. The appellant had also ventured into construction and property development which was motivated by his belief that those were lucrative enterprises. But he soon ran into financial difficulties when he could not recoup a sum of R800 000 that he had invested in his construction business. To extricate himself from this situation the appellant resorted to using his practice's trust account to perpetrate the offences of which he was convicted.

The appellant admitted all the material elements of the various offences as well as the underlying facts but not the amounts involved in respect of the 32 counts of fraud that were in excess of R500 000. The prosecutor accepted the plea and the trial court, being satisfied that the appellant had correctly pleaded to the elements of fraud relating to counts 1 to 64, convicted the appellant as charged.

The trial court found that s 51(2)(a) read with Part II of Schedule 2 of the Act was applicable but that substantial and compelling circumstances existed justifying the imposition of a lesser sentence. It imposed a composite sentence of 10 years' imprisonment in respect of the affected 32 counts of fraud and in respect of the remaining counts of fraud the trial court, also imposed a sentence of 10 years' imprisonment. A sentence of six years' imprisonment was imposed on count 65 which was ordered to run concurrently with the combined sentence of 20 years' imprisonment. The trial court then granted the appellant leave to appeal against that sentence to the Free State Division which dismissed the appeal, prompting the appellant to apply for special leave to appeal to the SCA.

The SCA held that for s 51(2)(a) to find application in this case it was incumbent upon the prosecution to prove all the elements of the offence of the affected fraud counts in the form specified in the Schedule. This entailed that the evidence regarding all the elements of the form of the scheduled offence ought to have been led before verdict and for the trial court to find, as a matter of fact, that those elements specified in the Schedule were present. This, the prosecution failed to do. Accordingly, where an accused is convicted solely on the basis of a s 112(2) statement, the offence contemplated in s 51(2)(a) of the Act must be determined only with reference to the contents of that statement. Therefore the trial court did not acquire the requisite jurisdiction to invoke s 51(2)(a) of the minimum sentence provisions.

Consequently, the SCA found that the sentence imposed in respect of the 32 counts of fraud thought by the trial court to fall within the purview of s 51(2)(a) falls to be reconsidered and a fresh sentence imposed in respect of counts 1 to 64.

The SCA, in consequence, held that a period of 12 years' imprisonment was appropriate in the circumstances.

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