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

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Hewitt v S (637/2015) [2016] ZASCA 100 (9 June 2016)

The Supreme Court of Appeal (SCA) today handed down judgment in tennis icon Robert Hewitt's appeal against an effective sentence of six years' imprisonment.

The appellant, Mr Hewitt, a world renowned champion tennis player and instructor, was convicted in the Gauteng Division of the High Court on two counts of the rape of two girls aged 12 and 13 years and one count of the indecent assault of a 17 year old girl. The rape offences were committed in the early 1980s whilst the offence in relation to indecent assault was committed in 1994.

The appellant was 75 years old when he was convicted in March 2015. He was sentenced to undergo eight years' imprisonment in respect of each of the rape counts and two years' imprisonment for the indecent assault. The sentences were ordered to run concurrently and two years of each of the rape sentences were suspended for a period of two years on condition that he pays a collective sum of R100 000 to the Department of Justice and Constitutional Development to be utilised to further the department's campaign against the abuse of women and children. He was therefore sentenced to undergo an effective period of six years' imprisonment.

On appeal, with the leave of the high court (Bam J), it was argued on the appellant's behalf that the sentences were startlingly inappropriate. It was contended that the high court overemphasised the seriousness of the offences at the expense of the appellant's personal circumstances having regard to his advanced age and ill-health and that he had only raped each of the rape complainants once and had not repeated the offences. Counsel for the appellant argued for an amelioration of the sentence given his personal circumstances.

The SCA reiterated that the imposition of sentence is the prerogative of the trial court and that an appellate court may not interfere with the trial court's discretion on sentence merely because it would have imposed a different sentence. The SCA stated that it is not enough to conclude that its own choice of penalty would have been an appropriate penalty, but that something more is required – an appellate court must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not. And that the trial court committed a misdirection of such a nature, degree and seriousness that shows that it did not exercise its sentencing discretion at all or

exercised it improperly or unreasonably when imposing it. The SCA could only interfere if there was a ‘striking’ or ‘startling’ or ‘disturbing’ disparity between the trial court’s sentence and that which it would have imposed. The appellant’s interests had to be balanced against the nature of the crime, and the interests of the victims and society.

The SCA held that whilst appellant’s poor health is certainly a matter which must be considered as well as his advanced age. That as the court a quo had observed, Mr Hewitt does not suffer from a terminal or incapacitating illness as he leads an active life which includes personally and successfully running a commercial citrus farm and the he is even able to drive his employees home daily; and that it was also not disputed that the medical treatment and care that he requires would be available in prison. The SCA reiterated that whilst advanced age is a mitigating factor, it is not a bar to a sentence of imprisonment.

The SCA was not satisfied that the court a quo exercised its sentencing discretion improperly. In its view the sentences fitted the criminal and the crime and fairly balanced the competing interests. The SCA thus concluded that it had no right to interfere in the sentence imposed by the high court.

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