



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

The Minister of Police v Stanfield (798/2018) [2019] ZASCA 183 (2 December 2019)

From: The Registrar, Supreme Court of Appeal

Date: 2 December 2019

Status: Immediate

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

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against a decision of Twala J sitting in the Gauteng Division of the High Court, Johannesburg. The appeal was upheld with costs.

The matter concerned certain firearms of the respondent that were seized on 25 June 2017, in terms of a search and seizure warrant under the Criminal Procedure Act 51 of 1977 (CPA), and thereafter retained by the South African Police Services (SAPS). The respondents were arrested and charged with various offences relating to the unlawful issuing of the licences for these firearms.

The respondents approached the court below for an order compelling the SAPS to return the firearms to them in terms of s 31(1)(a) of the CPA. This provision states that certain seized articles are to be returned to the person from whom they were seized, if no criminal proceedings have been instituted in connection therewith, or if it appears that such article will not be required at the trial for purposes of evidence or an order of court, and if such persons may lawfully possess the article. The respondents claimed the benefit of s 31(1)(a) because they contended that the charges in relation to the licences of the firearms had been withdrawn. The appellants (the respondents in the court below) submitted that such withdrawal was only provisional, while the Director of Public Prosecutions (DPP) awaited a certain directives from the National Director of Public Prosecutions (NDPP). Alternatively, the respondents sought that the matter be referred to an enquiry in terms of s 102 of the Firearms Control Act 60 of 2000 (the FCA). Although of the view that criminal proceedings were not pending against the respondents, Twala J nevertheless had 'legitimate concerns' as to the lawfulness of the firearm licences and was thus not persuaded that the respondents were entitled to the relief sought in terms of s 31(1)(a) of the CPA. The high court dismissed the return application but granted the alternative relief.

The SCA considered s 31(1)(a) of the CPA and confirmed that, in order to satisfy the requirement of an absence of criminal proceedings, an applicant would have to prove not only that no criminal proceedings were pending at the time, but also that there was no reasonable likelihood of criminal proceedings being instituted in connection with the seized article in the foreseeable future. Only if the applicant has

discharged this onus would the respondents have to show, on a balance of probabilities, that an applicant may not lawfully possess the article. The SCA held that firstly the respondents in the present matter had not been able to satisfy the requirement that criminal proceedings were not pending (or likely) either at the time the order was granted or at the present time, when the criminal proceedings had been re-instituted. Secondly, the appellants demonstrated that the possession of the firearms by the respondents would be unlawful.

The SCA thus held that the appellants' retention of the seized firearms was justified and that the respondents were not entitled, on any of the grounds listed in s 31(1)(a) of the CPA, to the return of such firearms. In the result, the appeal was upheld with costs.
