



**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 18 September 2020

STATUS Immediate

***Moamogoe v The State* (Case no. 191/2019) [2020] ZASCA 106
(18 September 2020)**

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.

Today the Supreme Court of Appeal (the SCA) dismissed the appeal of the appellant against the decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The appellant, Mr Ofentse Lofentse Moamogoe, was indicted in the high court on the following charges: two counts of robbery with aggravating circumstances (counts 1 and 2); one count of murder (count 3); one count of unlawful possession of a firearm (count 4); and one count of unlawful possession of ammunition (count 5). The appellant entered into a plea and sentence agreement (plea agreement) with the State in terms of s 105A(1) of the Criminal Procedure Act 51 of 1977. In the plea agreement, the appellant agreed to plead guilty on counts 2 and 3. The plea agreement recorded that the appellant agreed to be sentenced to 25 years' imprisonment of which 5 years was suspended on certain conditions. The plea agreement also recorded that 10 years of the remaining 20 years' imprisonment would run concurrently with the 10 years' imprisonment imposed on another sentence for which the appellant was imprisoned. It recorded that the agreed effective sentence was 10 years' imprisonment.

In the high court, the appellant confirmed the terms of the plea agreement, and was duly convicted and sentenced in accordance thereof. Subsequent to his conviction and sentence, the appellant applied for leave to appeal against his sentence in the high court, which was dismissed. The appellant successfully petitioned the SCA for special leave to appeal against sentence, and in his affidavit in support thereof, the appellant alleged, for the first time, that the plea agreement did not accurately reflect the verbal agreement between him and the State.

The SCA held that the question was whether the issue raised by the appellant could be dealt with in the appeal or whether the appellant should have brought a review application. The SCA held that the terms of the plea agreement were clear and were confirmed by the appellant in the high court. It also held that the appellant's allegation that the plea agreement did not correctly record what had been agreed in respect of sentence, was a matter extraneous to the record. It held that it was trite that an appeal is decided on the record of the proceedings in the lower court. In the absence of an application to adduce further evidence on appeal, the SCA held that it was bound by the record. The SCA held that the only possible remedy for the appellant would have been to launch an application for review setting out the allegations on affidavit, so that the State could have dealt with them under oath. It was therefore not possible

for the appeal court to deal with the issue raised by the appellant on appeal. The appeal was accordingly dismissed.