



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 29 September 2011
STATUS Immediate

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.

Mathebula & another v The State (045/11) [2011] ZASCA 165 (29 September 2011)

The two appellants had been convicted of robbery with aggravating circumstances involving the use of a firearm as well as unlawful possession of ammunition. In addition the second appellant was convicted of the negligent discharge of a firearm. The two appellants were each other sentenced to 20 years' imprisonment in respect of the robbery with aggravating circumstances. In respect of the counts of unlawful possession of a firearm and unlawful possession of ammunition which were considered together for purposes of sentence, the two appellants were sentenced to 3 years' imprisonment. The second appellant (Novel) was also sentenced to 1 year imprisonment on the count of negligent discharge of a firearm.

The court below had ordered the 3 years' imprisonment for unlawful possession of a firearm and ammunition imposed on the first appellant to run concurrently with the sentences of 20 years' imprisonment for robbery with aggravating circumstances. The effective sentence for the first appellant was 20 years' imprisonment. The court below declined to order the sentences imposed in respect of the second appellant to run concurrently. The effective sentence for the second appellant was 24 years' imprisonment.

On appeal the Supreme Court of Appeal (SCA) found that the court below erred in confirming a sentence of 20 years' imprisonment in respect of robbery with aggravating circumstances as none of the appellants were repeat offenders of the same offence as contemplated by s 51(2)(a)(ii) of the Criminal Law Amendment Act 105 of 1997 (the Act). The SCA upheld the appeal, set aside the sentence and replaced it with 15 years' imprisonment as provided for by s 51(2)(a)(i) of the Act. The SCA then ordered the sentences to run concurrently with the result that the first appellant will effectively serve 15 years' imprisonment.

Concerning the second appellant the SCA found that there was no justification for not ordering the sentences imposed on the second appellant in respect of unlawful possession of firearm and ammunition to run concurrently with the sentence imposed in respect of robbery with aggravating circumstances as these offences, were closely linked to each other. The SCA ordered the sentence to run concurrently with the result that the second appellant's sentence is 16 years' imprisonment.