



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE  
SUPREME COURT OF APPEAL**

29 May 2013

STATUS: Immediate

**MORNÈ BARNARD and THE STATE**

*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 (SCA) dismissed an appeal against the refusal of a petition in the high court for leave to appeal to that court against a conviction and sentence imposed in the regional court.

The appellant stood trial on three charges, namely rape, common assault and unlawfully pointing a firearm in the regional court, Welkom. On 23 March 2010, he was convicted of rape and sentenced to 15 years' imprisonment. On that same day he applied, in terms of s 309B of the Criminal Procedure Act 51 of 1977 (the Act), for leave to appeal against his conviction and sentence. The trial court refused the application. Thereafter, and in terms of s 309C of the Act, he applied to the Judge President of the Free State Provincial Division, for such leave. The petition to the high court was refused by two judges (Kruger and Moloï JJ).

The question before the trial court was whether the intercourse was consensual or not. The appellant's version was that the intercourse was consensual and he believed that the complainant was a prostitute.

The SCA held that it was not persuaded that the magistrate was wrong in the assessment of the evidence. It was also not satisfied that there exists a reasonable possibility that an appeal court can reach a different conclusion in respect of the conviction.

In respect of sentence, the SCA found that, having regard to the nature and circumstances of the offence, the personal circumstances of the appellant as well as the interests of the community, it was not persuaded that another court might find that the sentence of 15 years' imprisonment is unduly excessive or shockingly inappropriate.

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