

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

31 March 2008

STATUS: Immediate

Izak Andreas Geldenhuys v 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

The Supreme Court of Appeal today declared sections 14(1)(b) and 14(3)(b) of the Sexual Offences Act 23 of 1957 to be inconsistent with the Constitution and hence invalid to the extent that these sections differentiate between heterosexual and same-sex sexual activities by setting the 'legal age of consent' in respect of such activities at 16 and 19 years, respectively. It held that the age differential on the face of it discriminates unfairly on the grounds of sexual orientation and that no justification for maintaining this differential had been shown. The Court severed certain words from these sections and read other words into these sections in order to set a uniform age of consent of 16 years for both same-sex and heterosexual activities. It pointed out that section 14 of the 1957 Act has been repealed with effect from 16 December 2007 by the Criminal Law (Sexual Offences) Amendment Act 32 of 2007 and replaced by section 15 and 16 of the 2007 Act which set a uniform age of consent of 16 years for all consensual sexual activities.

The appellant in this appeal had been convicted in the regional court of ten counts of contravening section 14(1)(b) of the 1957 Act (viz the commission of immoral or indecent act with the complainant, a boy under the age of 19 years at the relevant times). The regional court had sentenced him to an effective 11 years' imprisonment. His appeal to the Pretoria High Court against his convictions failed, but that court reduced his effective sentence to seven years' imprisonment. In the High Court, the appellant raised a constitutional challenge to section 14(1)(b) of the 1957 Act, but this challenge was rejected by the High Court.

On a further appeal to the Supreme Court of Appeal, the constitutional challenge to sections 14(1)(b) and 14(3)(b) succeeded. The effect of the orders of constitutional invalidity made by the SCA is that, if the Constitutional Court confirms these orders, then the appellant's convictions on the last six counts (relating to acts perpetrated on the complainant while he was over the age of 16 years) will be set aside. The SCA held, however, that the regional court and the High Court could not be faulted in their conclusion that the appellant's version in respect of the first four counts, when viewed against the totality of the evidence adduced, as well as against the inherent probabilities, was false. The appellant's appeal against his convictions on the first four counts was therefore dismissed.

The SCA noted that the appellant had been in prison since 3 December 2003, as he was not granted bail pending his trial or pending his appeals. He had been serving his sentence since 8 July 2005. Therefore, at the time this appeal was heard, the appellant had served more than two years and seven months of his effective seven year sentence (as reduced by the High Court). The SCA granted temporary relief to the appellant pending the decision of the Constitutional Court, by making an order suspending the sentence imposed on the appellant in respect of the last six counts until such time as the Constitutional Court has decided whether or not to confirm the SCA's orders of constitutional invalidity. The effect of this was that, pending the decision by the Constitutional Court in this regard, the appellant's effective sentence must be regarded for all relevant purposes as being four years' imprisonment.

ends.