



THE SUPREME COURT OF APPEAL OF

SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 16 March 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Petersen v The State (295/2021) [2023] ZASCA 26 (16 March 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with no order as to costs, an appeal against the decision of the Western Cape Division of the High Court, Cape Town (the high court).

This was an appeal against a reconsideration of an indeterminate sentence imposed in terms of s 286B of the Criminal Procedure Act 51 of 1977 (the Act). The appellant was convicted by the high court on 11 August 1998. He was declared a dangerous criminal in terms of s 286A of the Act and given an indeterminate period of imprisonment in terms of s 286B(1)(a). The time period after which the appellant was to be brought back to court for reconsideration of his indeterminate sentence, in terms of s 286B(1)(b), was set at 17 years.

The period of 17 years expired in 2015. The proceedings commenced before a different judge (i.e. Hlope JP), in terms of s 286B(2), on 7 December 2015. The judge then ordered that imprisonment for an indeterminate period must be confirmed and that the appellant should be brought before court on or before 1 December 2018. The order also provided for the appellant to be afforded an opportunity to consult with a psychiatrist and undergo intensive psychotherapy with a psychologist. On 6 December 2018, just before the expiry of the three year period, the appellant was duly brought before court for the second reconsideration of his sentence. Again, the same judge presided over the matter. After various postponements, on 29 August 2019 the judge ordered further detention, in terms of s 286B of the Act, for a period of five years.

Leave to appeal against the further period of imprisonment was sought by the appellant, and refused by the high court. On 4 February 2021, the SCA granted leave to appeal against the sentence imposed on 29 August 2019.

The SCA found that there were several glaring irregularities with the procedure followed by the high court. In the first place, the court was obliged to consider whether the appellant was still 'a dangerous criminal' posing a danger to society and to give reasons for its declaration. It failed to do so. Secondly, no report of a Parole Board was placed before court. The high court, said the SCA, was in no position to determine whether the indeterminate sentence should be converted into a determinate one or whether the appellant ought to be released. The SCA held that on these grounds alone, the high court order fell to be set aside. The SCA found that the high court had approached the matter as though the appellant had an onus to prove that he qualified for parole and held that it was the high court's duty, instead, to enquire into whether the appellant remained a dangerous criminal.

Counsel for the appellant argued vigorously for the SCA to intervene to 'balance the injustice' suffered by the appellant and to summarily release him. The SCA found that that option was not available to it having regard to the peremptory language employed in the Act. The SCA held that in the absence of a Parole Board report, its ability to substitute the sentence of the high court with its own sentence was constrained. The SCA held further that the primary task of a reconsideration court was to consider whether an indeterminate sentence was still appropriate. That required consideration of whether the prisoner concerned was still to be treated as a 'dangerous criminal'. However, there was no evidence

upon which the SCA could make such determination. An order remitting the matter to the high court so that a proper inquiry may be carried out in accordance with s 286B, carried with it the risk of further delays to the obvious prejudice of the appellant. In order to ensure that justice was delayed no further, the SCA placed strict time limits as to when the appellant should be brought before court again for a proper determination of whether he was a dangerous criminal and what sentence, if any, should be imposed.

The SCA upheld the appeal and ordered that the matter be remitted to the high court for reconsideration.

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