



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 27 May 2010

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

E BRITZ v THE STATE

The appellant was sentenced to an effective three years' imprisonment for 67 counts of fraud committed against her employer over a period of three-and-a-half years and involving over R330 000.

The appellant sought to adduce evidence on appeal of the fact that after she had been sentenced and served over four months of her sentence, her mother had died and her children (a girl aged 17 and a boy aged 13) would therefore not be cared for properly whilst she was in prison. The magistrate granted bail to the appellant pending appeal.

The SCA rejected the application for three reasons. First, reception of the evidence would make no difference to the sentence of imprisonment. The magistrate had sentenced the appellant on the very basis that her mother was too ill to look after the children. Additionally, the magistrate had correctly considered that direct imprisonment was the appropriate sentence despite the fact that the appellant had children.

Second, there was no prima facie likelihood of the evidence being true. There were discrepancies in the facts put before the court. It appeared from the record that the children could be looked after by the appellant's father over weekends when their own father was at work, and that there was a domestic helper employed full-time during the week.

Third, the fact that the appellant's husband had to work longer hours to supplement the income she had earned was not an exceptional or peculiar circumstance that occurred after sentence but was precisely what one would have expected.

The SCA concluded that the emotional needs of the children could not be allowed to trump duty on the State properly to punish criminal conduct where the appropriate sentence was one of imprisonment.

The effect of the judgment is that the appellant will have to return to jail, although the SCA pointed out that the Commissioner for Prisons or a parole board could invoke the procedure under the Criminal Procedure Act to enable the magistrate to alter the remainder of the sentence to correctional supervision.

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