

# 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** 29 November 2010  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Van de Venter v The State***  
**(342/10) [2010] ZASCA 146 (29 November 2010)**

### **Media Statement**

Today the Supreme Court of Appeal (SCA) upheld an appeal by André van de Venter against the sentence imposed on him by the High Court for his conviction on one count each of murder and theft. He was sentenced by the High Court to 28 years imprisonment for the murder and 5 years for the theft. As those sentences were to run consecutively he was thus sentenced to an effective term of 33 years' imprisonment.

The appellant was convicted murdering Eric Nezar who was killed in his flat in Pretoria on 27 March 1998. The SCA held that the judgment of the court below on sentence was singularly unhelpful. The judgment of the trial court alluded to the gravity of the offence, the brutality of the deed and the lack of remorse displayed by the appellant as reflected in his failure to take the court into his confidence and his disposing of the deceased's possessions the next morning. What the judgment ignored though was the evidence contained in the reports of two psychiatrists in the employ of Weskoppies Hospital. Both had concluded that the appellant's moral responsibility was diminished because he had a schizoid personality and was emotionally depressed. The judgment of the high court also ignored the report of the social worker, which painted a picture of the appellant as a sad lonely youngster, the product of a broken home.

The SCA held that the High Court had misdirected itself in that it had failed to even mention the various mitigating factors that were present or to balance them against the aggravating features in the commission of the offences. The trial court in failing to afford appropriate recognition to those factors had disregarded the traditional triad of the crime, the offender and the interests of society. It followed that the sentence imposed by the trial court could not stand. It accordingly had to be set aside. The sentence of 28 years' imprisonment imposed by the court below pursuant the appellant's conviction on the murder charge, was set aside and in its stead was substituted a term of 18 years' imprisonment. The sentence of 5 years imprisonment imposed by the trial court pursuant to the appellant's conviction on the charge of theft was ordered to run concurrently with the 18 years imposed for the murder conviction. In the result the appellant was sentenced to an effective term of 18 years' imprisonment.

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