



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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

JACOBUS BOGAARDS v THE STATE (864/10)[2011] ZASCA 196
(21 NOVEMBER 2011)

The Supreme Court of Appeal today dismissed an appeal brought by Mr Jacobus Bogaards against the judgment of the North Gauteng High Court, Pretoria (per Murphy J and Dolamo AJ) which convicted him for harbouring and concealing ‘Boeremag’ trialists, Messrs Herman van Rooyen and Jan Rudolph Gouws, who escaped whilst under a court order to remain in custody in 2006.

The escapees, who were kept in custody at the Pretoria C-Max prison, disappeared during their trial in which they faced numerous, serious charges including treason, sabotage, murder, which involved the attempted assassination of former President Nelson Mandela, the manufacture and use of explosive devices, the bombing of a Soweto mosque and a Buddhist temple in Bronkhorstpruit. They slipped away during a lunch adjournment in which they were remanded, in custody in the court’s detention cells. The majority of the court (the court was divided in three directions) dismissed a challenge raised by Mr Bogaards that the escapees were not prisoners when they escaped because of a defect in the detention warrants under which they were kept in custody. The court found that the detention of a convicted or awaiting-trial person is lawful by virtue of the underlying court order (in the present instance a court order which refused the escapees bail until their trial was finalised) and that a defect in a detention warrant, even one which renders it invalid, cannot supersede the authority of the relevant court order. The escapees were therefore detained lawfully, the court held.

The majority of the court held further that the high court’s detention cells fell squarely within the statutory definition of ‘prison’ and the escapees remained prisoners regardless of the fact that their guards’ control over them apparently lapsed. The majority of the court concluded that Mr Bogaards had contravened the provisions of s 115(e) of the Correctional Services Act 111 of 1998 by knowingly harbouring or concealing escaped prisoners on his farm and sentenced him to five years imprisonment.

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