



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

DPP: Gauteng, Pretoria v Hamisi (895/17) [2018] ZASCA 61 (21 May 2018)

From: The Registrar, Supreme Court of Appeal

Date: 21 May 2018

Status: Immediate

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

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by the Director of Public Prosecutions against a judgment of the Gauteng High Court, Pretoria.

The issue at the centre of this appeal concerned the question whether where an accused pleads guilty to rape of a 12 year old girl in terms of s 112(2) of the Criminal Procedure Act, and admits in the written plea the age of the complainant, such admission absolves the state of its duty to prove the age of the complainant.

Mr Hamisi was convicted on a plea of guilty to rape of a 12 year old girl and sentenced to life imprisonment by the regional magistrate, Bronkhorstspuit. He then appealed to the high court against the sentence imposed contending that despite his plea of guilty and the admission therein that the complainant was 12 years of age at the time of the incident, the State still had a duty to prove the complainant's age. The high court found in his favour, set aside the sentence imposed by the magistrate and replaced it with a sentence of 15 years' imprisonment. In its judgement the high court reasoned that the state had failed to tender admissible evidence of the complainant's age and remarked that the written plea together with a J88 medico-legal report and a probation officer's report which formed part of the record did not constitute the requisite proof of the complainant's age in the absence of oral evidence on the issue of the complainant's age.

In the J88 report the examining medical practitioner had recorded the complainant's date of birth as 23 May 1997 and that she was 12 years old on the day of the incident. The same information was contained in the probation officer's report which had been intended to motivate for appointment of an intermediary to assist the complainant in the trial.

The Director of Public Prosecutions appealed to this court, on a point of law, in terms of s 311 of the CPA, against the judgement of the high court. This court found that indeed, at the start of the trial the State had a duty to prove all the elements of the crime with which Mr Hamisi had been charged. Broadly, this entailed leading evidence to prove the commission of the offence, the age of the complainant and the identification of the respondent as the perpetrator. However, once the plea of guilty and the statement in explanation thereof was tendered and accepted by the State, and the court was satisfied that the admissions supported the conviction, it was entitled to convict accordingly. The court therefore rejected Mr Hamisi's contention that evidence of the complainant's age should have been led.

Having decided the matter in favour of the DPP, this court re-instated the conviction originally imposed by the magistrate but altered the sentence to one of 20 years imprisonment. Having considered Mr Hamisi's personal circumstances and the seriousness of the offence of which he had been convicted, the court found that there was disparity between the 20 year term of imprisonment which it considered to be the appropriate sentence and the sentence imposed by the trial court. Therefore it was obliged to alter the original sentence. The 15 year term of imprisonment imposed by the high court was substituted with the 20 years' imprisonment sentence.