

Explanatory Note

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*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

The Court found the procedures for leave to appeal in s 316 of the Criminal Procedure Act (44 of 1977) to be constitutional.

Section 316 requires that an accused person convicted of an offence before a division of the Supreme Court must apply for leave to appeal against his or her conviction and sentence. This leave must be applied for from the judge who heard the case from which the person is appealing. If this judge is not available, the accused person can apply to another judge. If the application for leave to appeal is refused, the accused person may petition the Chief Justice of the Supreme Court of South Africa for leave to appeal. There are no such procedures for leave to appeal from the magistrates' courts.

Rens was accused of abduction and attempted murder in the Cape Provincial Division. He was convicted and sentenced and sought leave to appeal. The judge referred the question of the constitutionality of s 316 (read with s 315(4)) of the Criminal Procedure Act to the Constitutional Court. Rens argued that the difference in appeal procedures between the magistrates' courts and the Supreme Court violated the Constitution's s 8, the equality clause. Rens also argued that the leave to appeal procedures violated section 25(3)(h) (the right to have recourse by way of appeal or review to a higher court than the court of first instance), contending that only a full and substantial reassessment of the case meets the requirements of that section.

The Court rejected the distinction between the superior and inferior courts. It also held that the s 316 procedures were constitutional in that they allow for recourse by way of appeal or review to a higher court than the court of first instance as provided for in section 25(3)(h). The case was referred back to the Provincial Division.

The judgment of the Court was delivered by Madala J and was concurred in by the other members of the Court.