

Supreme Court of Appeal of South Africa

**MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 30 November 2006

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*

On 30 November 2006 the Supreme Court of Appeal handed down judgment in *Frans Oosthuizen v The State*. The appellant's appeal against a sentence of three years' imprisonment with one year suspended for three years on condition that he is not convicted of a crime involving violence committed during the period of suspension was upheld. The sentence was substituted with one of 18 months' imprisonment from which he could be placed under correctional supervision in the discretion of the Commissioner of Correctional Services.

The appellant had assaulted a youth employed by him, Mr Koos Fortuin. The assault was serious. Fortuin had sustained injuries to his ribs, a bleeding nose, a swollen face, bruises and painful shoulders. He had also sustained two half a centimetre puncture wounds on his head. He sustained no permanent injuries and was not admitted to hospital but was treated by a general practitioner who administered and provided medication. The appellant was convicted of assault with intent to do grievous bodily harm and

sentenced as aforesaid in the Magistrates' Court held at Fochville. The sentence was confirmed by the Pretoria High Court.

The appellant had previous convictions of housebreaking with the intention to assault and assault dating back to 1992. The magistrate concluded that the appellant had a propensity for violence and sentenced him accordingly.

This court considered that the magistrate had erred in this regard and had failed to consider a sentence in terms of s 276(1)(i) of the Criminal Procedure Act 51 of 1977, that is, imprisonment from which a person may be placed under correctional supervision at the discretion of the Commissioner for Correctional Services. Such a sentence would serve as a deterrent, bringing home to the appellant and others that behaviour of this kind would not be tolerated. Furthermore, it would promote rehabilitation and achieve a balance between the appellant's interests and those of society. Consequently the sentence imposed was substituted with a sentence of 18 months' imprisonment in terms of s 276(1)(i).

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