

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

Nkomo v The State

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

The Supreme Court of Appeal today upheld an appeal against a sentence of life imprisonment imposed on the appellant who had been convicted by a regional magistrate's court of rape. This court imposed instead a sentence of 16 years' imprisonment.

The appellant was sentenced by the Durban High Court to life imprisonment in terms of s 51(1) of the Criminal Law Amendment Act which requires its imposition in the case of a multiple rape unless compelling and substantial circumstances exist which warrant the imposition of a lesser sentence.

The regional court accepted the evidence of the complainant that the appellant, whom she met for the first time in a hotel bar on the evening of the rape, had forced her into a hotel room. There he had raped her once, and then locked her in the room (conduct that also attracted a conviction for kidnapping, and a sentence of three years imprisonment). She had attempted to escape from the room by jumping out a window, falling some ten metres to the ground. She injured her ankle and her hip in the process. The appellant was in the vicinity where she fell. He forced her back into the room, and raped her four times during the course of the night. He also forced her to perform oral sex on him. She escaped from him in the morning and reported the rapes to the police immediately.

The high court found that no substantial and compelling circumstances were present, and accordingly imposed the prescribed sentence of life imprisonment. That sentence was passed, however, before the Supreme Court of Appeal in 2001 had determined the appropriate criteria for deciding what constitute substantial and compelling circumstances. These include factors that are mitigating, such as youth, and the absence of previous convictions.

The Supreme Court of Appeal (Lewis JA, Cameron JA concurring) held that although the appellant's conduct had been cruel and callous, and warranted a lengthy sentence of imprisonment, the relative youth of the appellant, the prospect of rehabilitation, and the fact that he had no previous convictions compelled it not to impose life imprisonment. In this regard the court followed a number of its recent decisions in which it has been held that life imprisonment as a sentence for rape should not be imposed unless the case is devoid of substantial and compelling circumstances.

Theron AJA dissented, finding that the mitigating factors relied on by the majority did not amount to substantial and compelling circumstances, and that the appropriate sentence was that ordained by the legislature, life imprisonment.

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