CONSTITUTIONAL COURT OF SOUTH AFRICA

Klaas v State

CCT 52/17

Date of judgment: 15 March 2018

MEDIA SUMMARY

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

On 15 March 2018 at 10h00 the Constitutional Court handed down judgment in an application for leave to appeal against an order of the Supreme Court of Appeal. The Supreme Court of Appeal had dismissed Mr Michael Klaas's application for leave to appeal against his conviction and sentence imposed by the Regional Court, Alexandra Gauteng (trial court). The applicant was convicted of unlawfully manufacturing drugs and of dealing in drugs. He was sentenced to 15 years' imprisonment for dealing in drugs and 5 years' imprisonment for manufacturing drugs. The sentences were to run concurrently.

The background is as follows. On 11 June 2009 the South African Police Service, acting on a tip-off, conducted a search at the applicant's house and seized drugs, chemicals and equipment for manufacturing drugs. The investigations revealed that the applicant's house was used to manufacture drugs.

The applicant was charged for contravening certain provisions of the Drugs and Drug Trafficking Act 140 of 1992. On 22 November 2013 the applicant was convicted and sentenced. The applicant applied for leave to appeal against his conviction and sentence – twice to the High Court and once to the Supreme Court of Appeal. All three applications were dismissed. The applicant then lodged an application in the Constitutional Court for leave to appeal against the order of the Supreme Court of Appeal.

The applicant argued that his right to privacy was infringed when his house was searched by the police because the search was conducted in his absence and without a search warrant. He also challenged the evidence relied upon to convict him. He contended that the State did not prove that the drugs were manufactured in his house. The applicant also argued that, even if the drugs were manufactured at his house, there was no evidence to

suggest that he was aware of such activities. He said that he did not ordinarily live on the premises.

The Constitutional Court was satisfied that the applicant was correctly convicted and dismissed his application for leave to appeal against conviction. However, the Constitutional Court held that the applicant did not have a fair trial at the sentencing stage.

In a unanimous judgment written by Mhlantla J (Mogoeng CJ, Zondo DCJ, Cameron J, Froneman J, Jafta J, Kathree-Setiloane AJ, Kollapen AJ, Madlanga J, Theron J and Zondi AJ concurring), the Constitutional Court considered the applicant's sentence for dealing in drugs in light of the provisions of the Criminal Law Amendment Act.

Those provisions impose a minimum sentence of 15 years' imprisonment for a first offender if (i) the value of the drugs found is more than R50 000 and the offender is acting alone, or (ii) the value of the drugs is greater than R10 000 and the offender is acting as part of a syndicate. While a large quantity of drugs was found – 2920 tablets of mandrax – the State did not present evidence to prove the value of the drugs seized. Therefore, the minimum sentences could not apply. For that reason, the Constitutional Court held that there had been an irregularity in sentencing and that it was entitled to reconsider the applicant's sentence.

In reconsidering the sentence, the Constitutional Court considered the sentences imposed in other drug-related matters. Heavy sentences have been imposed upon people found guilty of manufacturing drugs because their actions have a significant impact on society. The Constitutional Court also considered the age of the applicant, the seriousness of the offence, and the fact that he showed no remorse for his actions, attempting to distance himself from them instead.

The applicant's original 15-year sentence for dealing in drugs was replaced with a 12-year sentence, which is to run concurrently with the applicant's 5-year sentence for manufacturing drugs.