

CASE NO. 382/95

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between:

ODETTE MORROW

Appellant

and

THE STATE

Respondent

CORAM: SMALBERGER, VIVIER *et* MARAIS JJA

HEARD: 26 February 1996

REASONS FOR JUDGMENT

DELIVERED: 28 February 1996

MARAIS JA/

MARAIS JA:

Appellant was charged in the magistrate's court for the district of Johannesburg with eight counts of fraud and five counts of theft as an alternative to the last five counts of fraud. The magistrate convicted her upon all but three of the fraud counts (counts 4, 5 and 6). He took the first three counts of fraud (counts 1, 2 and 3) together for purposes of sentence and imposed a fine of R500 or 125 days imprisonment and in addition a further 200 days imprisonment suspended for 5 years on condition appellant is not convicted of fraud or theft committed during the period of suspension. He imposed the same sentence in respect of count 7 and did so again in respect of count 8. On appeal to the Witwatersrand Local Division appellant's conviction upon counts 1, 2 and 3 and the sentence imposed as a consequence were set aside. The Local Division was of the opinion

that counts 7 and 8 had been improperly split but thought that the remedy lay in amending those counts by combining them in one count which it numbered 7A. It considered that count to have been proved beyond reasonable doubt but felt that an adjustment of the sentences originally imposed was required as a result of its consolidation of counts 7 and 8 and, in the result, imposed a fine of R 1000 or 250 days imprisonment and 200 days imprisonment suspended for 5 years on condition that appellant is not convicted of theft or fraud committed during the period of suspension. An application for leave to appeal to this court was refused but subsequently granted on petition to the Chief Justice. At the conclusion of the argument we allowed the appeal and set aside the only remaining extant conviction and sentence which were of course those which the Local Division had substituted for the convictions and sentences upon counts 7 and 8 arrived at by