THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

xx May 2011

STATUS: Immediate

KRIEL V THE STATE (483/10)

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 (the SCA) today upheld the appeal and set aside the order of the KwaZulu-Natal High Court refusing the appellant leave to appeal, to the KwaZulu-Natal High Court against the sentence imposed on him by the Vryheid Regional court. The latter order was replaced with an order granting the appellant leave to appeal.

The appellant was convicted in the Vryheid Regional Court on a charge of driving under the influence of liquor in contravention of s 65(1)(a) of the National Road Traffic Act 93 of 1996 (the Act) (count one) and two charges of culpable homicide (counts two and three). He was sentenced on count one to six years' imprisonment. On counts two and three he was sentenced to eight years' imprisonment of which two years were suspended for five years on condition that he was not convicted thereafter of culpable homicide involving a motor collision. His driver's licence was suspended for a period of two years. Leave to appeal against sentence was refused by the regional magistrate.

A petition to the KwaZulu-Natal High Court (Pietermaritzburg) for leave to appeal against sentence was refused. The appellant then applied to the high court for leave to appeal to the SCA against the refusal by the high court of his petition for leave to appeal. The high court, per Nicholson J, granted him leave to appeal to the SCA against the sentence imposed by the regional court.

The SCA held that the court a quo was wrong in doing so as an appeal from a decision of a regional court lies to the high court. The SCA held that, on the authority

of *Matshona v S* [2008] 4 All SA 68 (SCA), it could not determine the merits of the appeal. The SCA stated that the issue before it was whether leave to appeal to the high court should have been granted. The test in that regard, it stated, was simply whether there was a reasonable prospect of success on appeal against sentence. The SCA stated that, if the culpable homicide is ignored, first offenders who are convicted for driving under the influence of liquor are generally not sentenced to direct imprisonment but to a fine, alternatively to imprisonment of which a portion is suspended. The sentence of six years is the maximum period of imprisonment for reckless and negligent driving under the Act. There was additionally no finding by the magistrate that the appellant was heavily under the influence of liquor. The SCA held that bearing these factors in mind there exists a reasonable prospect that a court of appeal may consider the sentence imposed to be too severe. The SCA stated that the appellant assumed no conscious risk, yet his period of direct imprisonment is double that imposed in *S v Nyathi* 2005 (2) SACR 273 (SCA). The SCA stated that the magistrate took the decision to cancel the appellant's driver's licence for two years, without holding an enquiry, and a court of appeal might well find this was a misdirection.

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