

SOUTH AFRICA / JUDGMENT

Abdul v S (A556/2010) [2010]

ZAWCHC 564 (19 November 2010)

[2010] ZAWCHC 564

COURT

Western Cape High Court, Cape Town

BEFORE

Erasmus, Kuschke

CASE / FILE NUMBER

A556/2010

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A556/2010

DATE: 19 NOVEMBER 2010

In the matter between:

RASHAAD ABDULAppellant

and

THE STATERespondent

J U D G M E N T ERASMUS, J: This matter is before us on appeal. The appellant was convicted and sentenced on 16 April 2003 and sentenced to a term of 15 years

imprisonment. Very little is said in the record as to why there was a lapse of a period of over six years before leave was granted. It seems as if the record of proceedings of the court a quo had gone missing. I have a concern about the records in the Regional Court going missing, as this is not the first, and I take it will not be the last of these matters, and it seems that in most of these matters the appellants bring their appeals late. Irrespective of the ultimate order of this Court, I would urge the Department of Justice to urgently look into the archiving of records in criminal matters where people were sentenced to a long term imprisonment. I now turn to the appeal itself. On the sentence issue, the magistrate was unable to reconstruct the record and, therefore, was unable to comment on the sentence imposed. We are in a similar position. We do not have sufficient information before us to deal with the sentence. I believe it is in the interest of justice that the imposed sentence be set aside and the matter be referred back to the trial court to consider sentence afresh. The order that I make is the following: The conviction is confirmed.

The imposed sentence of 16 April 2003 is set aside.

The matter is referred to the Regional Court to consider sentence afresh.

The appellant shall remain in custody, of course now as an awaiting trial prisoner, if he his not serving any other sentence, until such time that he is brought before the Regional Court magistrate. That is the order of the Court. ERASMUS, J KUSCHKE AJ: I agree KUSCHKE AJ

J U D G M E N T

ERASMUS, J:

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That is the order of the Court.

ERASMUS, J

KUSCHKE AJ: I agree

KUSCHKE AJ

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