

SOUTH AFRICA / JUDGMENT

Hendricks v S (A420/14) [2015]

ZAWCHC 14 (18 February 2015)

[2015] ZAWCHC 14

COURT

Western Cape High Court, Cape Town

BEFORE

Gamble, Blignault, Mantame

CASE / FILE NUMBER

A420/14

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IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

Case No: A420/14

DATE: 18 FEBRUARY 2015

In the matter between:

MOEGAMAT KASHIEF HENDRICKS.....Appellant

Versus

THE STATE.....Respondent

CORRECTION OF SENTENCE

GAMBLE, J:

- [1] On 18 February 2015 the appeal in this matter was upheld in part: the sentence on count 3 was reduced from 25 years to 15 years imprisonment. In addition it was ordered that part of the sentence (2 years) on count 3 should run concurrently with the sentences on counts 1,2,4 and 5 (all of which were to run concurrently too). The court further recorded that the effective sentence was to be 25 years imprisonment.
- [2] On 27 February 2015 the Department of Correctional Services drew to the attention of the Registrar of this court an inconsistency in the sentence, viz, that by ordering two years of the sentence on count 3 to run concurrently with the remaining sentence, the effective period of imprisonment was in fact 28 years and not 25 years.

- [3] It was at all material times the intention of the 3 judges in this court that the effective sentence imposed on the appellant should be reduced to 25 years imprisonment. The direction that two years of the sentence on count 3 rather than 5 years should run concurrently is a typographical error which eluded all 3 members of the court.
- [4] The provisions of section 298 of the Criminal Procedure Act, 51 of 1977 cannot be applied in the instant case since the time period of more than a week that has elapsed in the interim renders the corrective action contemplated in that section not sufficiently immediate. However, this court is entitled, under the common law, to correct an order or sentence provided the tenor of the earlier order is preserved. (*S v Wells* 1990(1) SA 816(A) at 820 C-D).
- [5] In my view, the tenor of our order was that the appellant's sentence should be reduced from an effective sentence of 44 years to one of 25 years. In the circumstances the period of "two years" referred to in para 27 of the judgment falls to be corrected and replaced with the period of "five years" in order to give effect to our intention.
- [7] In the circumstances I propose that para 27 of the judgment be corrected and that word "two" in the 2nd line thereof to be substituted by the word "five".

PAL GAMBLE

I agree: It is so ordered.

A P BLIGNAULT

B P MANTAME

I agree

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