SUMMARY

On 14 January 2016, in Villiersdorp, Western Cape, the appellants stole 650 metres of copper cabling belonging to Telkom worth a value of R35,000.00, and were subsequently convicted of theft in the district court at Caledon on 13 September 2016. On 28 February 2017, the appellants were each sentenced to 12 years imprisonment in terms of the Criminal Matters Amendment Act 18 of 2015 (the "**2015 Act**").

The 2015 Act was promulgated with the intention of, *inter alia*, amending the Criminal Law Amendment Act 105 of 1997 (the "**1997 Act**") so as to adequately regulate the imposition of minimum prison sentences in respect of essential infrastructure-related offences. In terms of the 2015 Act and the General Law Amendment Act 62 of 1955, copper cabling is regarded as an "essential infrastructure" which aids in the distribution of a basic service to the public.

Both appellants were granted special leave to appeal against their sentences from the above division.

As the basis of the appeal, the appellants contended that:

1. the Magistrate in the court *a quo* erroneously convicted them of an offence which fell under Part II of Schedule 2 of the 2015 Act, which conviction carries a minimum prison sentence of 15 years, as opposed to Part V of said Act; which attracts only a 3-year-minimum prison sentence; and
2. the Magistrate erred in not properly considering their respective personal circumstances and, additionally, failed to take into account their 14-month period of incarceration whilst awaiting trial when formulating their prison sentences. A key element to be considered by the Western Cape High Court upon appeal was the seriousness of the appellants' crime and whether the sentencing as imposed by the Court *a quo* was legally correct and appropriate in the circumstances.

HELD

On appeal, the State highlighted undisputed evidence that was put forth in the court *a quo*, specifically that Telkom provides services which are essential to a community's infrastructure. Furthermore, attention was drawn to the fact that, upon visiting the scene, the Warrant Officer found at least four telephone poles where the cables had been cut and removed and the appellants were found in possession of equipment suitable to cut the cabling. As such, the State reiterated that the offence committed by the appellants rendered the applicability of Part II of Schedule 2 of the 2015 Act appropriate in the circumstances, and that the appellants were correctly sentenced in accordance therewith.

The High Court held as follows:

1. theft and damage to essential infrastructure in the provision of a basic service did in fact attract the prescribed minimum sentence contained in Part II, and not Part V of Schedule 2 of the 2015 Act;
2. the sentence imposed by the Magistrate indicates that the appellants' 14-month incarceration prior to sentencing was not overlooked;
3. the Magistrate did in fact consider the appellants' personal circumstances and previous convictions when considering an appropriate sentence; and
4. the Magistrate correctly considered that the legislature deemed theft and destruction of essential infrastructure for basic services to the public sufficiently serious to impose a 15-year imprisonment.

In light of the above, the appeal was dismissed. The High Court found the sentences imposed by the Court *a quo* to be appropriate, correctly considered, legally sound, and in line with the Legislature's intention as envisaged by the 2015 Act.

Whilst the appellants sentences of 12 years imprisonment is inconsistent with the prescribed minimum sentence of 15 years, section 51(3) of the 2015 Act permits a Court to impose a lesser sentence, should same be appropriate in the circumstances

VALUE

Courts are likely to view the theft and/or damage of an essential infrastructure as a particularly grievous criminal offence and may impose a minimum prison sentence of 15 years, even in the case of first-time offenders.

Written by Jayna Hira and supervised by Jarryd Spargo, 5 June 2018

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