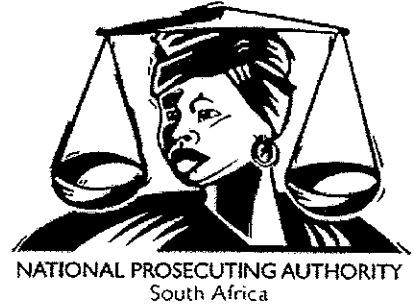


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DATE: 18 MAY 2012

**RE: WESTERN CAPE DPP TO APPEAL JUDGMENT ON
SEXUAL OFFENCES ACT**

The Director of Public Prosecutions in the Western Cape will appeal the judgment on Sexual Offences Act which was delivered by the Western Cape High Court on 11 May 2012. The matter will be appealed to the Supreme Court of Appeal on an urgent basis. The appeal also includes a request to the Court to deal specifically with the status of partly- heard and finalized cases.

Full Bench of the Western Cape High Court ruled in the unreported matter, *DPP WC versus Prins* (A523/11), that section 5(1) of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 does not disclose a punishable offence. Mr Arnold Prins was indicted on a charge of sexual assault in contravention of Section 5 (1) of the Act. The Regional Magistrate quashed the charge because it did not disclose an offence as Section 5 (1) of the Sexual Offences Act does not contain any penalty for the alleged offence. The DPP office appealed that judgment but the Western Cape High Court dismissed the State's appeal based on the principle that there is no punishment without a law.

THE SECTIONS IN THE ACT 32 OF 2007 AFFECTED BY THE PRINS MATTER

The sections which are affected by the Prins matter are sections 5 – 16, 21 and 22 of Act 32 of 2007 and further read with section 55 because it

does not contain penalty clauses. A full list of these offenses is attached hereto as Annexure B.

THE EFFECT OF THE JUDGEMENT

None of the offences listed in Annexure A may be prosecuted pending the outcome of the Appeal to the Supreme Court of Appeal.

NEW CASES REGISTERED IN TERMS OF THE AFFECTED SECTIONS OF ACT 32 OF 2007 WHERE THE SOUTH AFRICAN POLICE HAVE NOT YET MADE AN ARREST

The South African Police will be requested not to arrest any person until a decision by the Supreme Court of Appeal is made on the legal point. However dockets in respect of complaints will be opened and referred to the relevant Senior Public Prosecutors who will peruse the dockets to see if any other substantial charge(s) can be utilised to substitute the offences affected. If no substitution can occur the Senior Public Prosecutor will retain the docket for decision until clarity is obtained on the legal point. If investigation is outstanding in these dockets, instructions will be given to complete such investigation and upon completion returned to the Senior Public Prosecutor for decision.

CASES CURRENTLY ENROLLED RELATING TO AFFECTED SECTION OF ACT 32 OF 2007 WHERE THE ACCUSED HAS NOT PLEADED AND THERE ARE NO OTHER SERIOUS CHARGES

The DPP has decided that charges against the accused must be withdrawn, unless a substantive common law offence or other statutory offence covers the criminal act. In respect of partly heard matters the prosecutor will apply for the matter to be postponed in the interest of justice for at least two months pending the decision of the SCA.

IMPLICATIONS OF JUDGMENT IN OTHER PROVINCES

In terms of the *stare decisis* (stand by previous judgment)- rule, a provincial division is not bound by the decision of another provincial division, nor is a single judge in one province bound by the decision of a division in another province.

The decision to appeal this judgment is informed by the far reaching implications on sexual violence cases in the whole province as well as the government's efforts in fighting the alarming rate of sexual violence especially against women and children.

Issued by:

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And

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