

## **DAVID ZWIMBA v THE PEOPLE (1988 - 1989) Z.R. 107 (S.C.)**

SUPREME COURT  
SILUNGWE, C.J., GARDNER, AG. D.C.J., AND CHAILA AG. J.S.  
26TH JANUARY 1988  
(S.C.Z. JUDGMENT NO. 18 OF 1988)

### **Flynote**

Sentence - Increase of sentence by appeal - Principles on which increase can be made.

### **Headnote**

On conviction the appellant was sentenced to three years imprisonment. He appealed and the High Court increased the sentence to five years without giving reasons for the increase. The appellant appealed .

### **Held:**

The only reasons for increasing the sentence are (1) where a minimum statutory sentence has not been imposed (2) where the sentence imposed by the lower Court was totally inadequate and (3) where the original sentence was wrong in principle.

For the appellant: In person.  
For the respondent: G.S. Phiri, Senior State Advocate.

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### **Judgment**

**GARDNER, AG. D.C.J.:** delivered the judgment of the Court.

The appellant was convicted of indecent assault on a female, and sentenced to three years imprisonment with hard labour. On appeal to the High Court the appeal against conviction was dismissed and the sentence was increased to five years imprisonment with hard labour. The appellant now appeals against the sentence.

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When imposing the increased sentence the learned Judge gave no reasons for doing so. This Court has frequently stated that there are only three reasons for increasing sentence. They are, firstly, if a minimum statutory sentence has not been imposed, secondly, if the sentence imposed by the lower Court was totally inadequate, and, thirdly, if the sentence originally imposed was wrong in principle. As we have said, in this case the learned appellant Judge gave no reasons for the increase in sentence, and there does not appear to us to be any valid reason.

The appeal against sentence is allowed. The increased sentence of five years imprisonment with hard labour is set aside, and we restore the original sentence of three years imprisonment with hard labour with effect from 3<sup>rd</sup> February 1986.

Appeal allowed.

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