



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case number: R28/2019

In the matter between:

THE STATE

And

CHARLES UGALA

CORAM: REINDERS, J et CHESIWE, J

JUDGMENT BY: CHESIWE, J

DELIVERED ON: 25 APRIL 2019

- [1] This matter has been referred to the High Court for special review in terms of Section 302 of the Criminal Procedure Act 51 of 1977 (CPA). The Additional Magistrate for Bloemfontein pointed out that the accused pleaded not guilty to three counts. Two counts of contravening the provisions of section 5 (a), 5(b), read with sections 1, 13, 17, 19, 20, 21 and section 64 of the drugs and Drug Trafficking Act 140/92. Count 3 contravening section 49(1) (a) of the

Immigration Act 13 of 2002. Hereafter the accused was found guilty on all counts and was sentence to seven years imprisonment on count 1 and on count 2 was fined R500 or 50 days imprisonment.

[2] The matter was referred to the Review Judge in chambers without any

explanation or a memorandum attached. I send a query to the Presiding officer to request reasons as to why the matter was send for review.

[3] The learned magistrate send a memo dated 20 February 2019 and stated the following reasons: “..... It is my humble submission that the conviction of the offender on both counts is in accordance with justice. I further submit that the sentence falls above this court’s jurisdiction. I respectfully refer this matter to the Honourable Reviewing Judge for review as per the aforementioned section.”

[4] The accused was legally represented throughout the trial by Adv. Shuping.

[5] Section 302 of the CPA provides that: “if a sentence imposed by a judicial officer who has not held the substantive rank of magistrate of higher for a period of seven years, or which exceeds a period of six month, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer..... Shall be subjected in the ordinary course to review by a judge of the provincial or local division having jurisdiction.”

[6] On perusal of the record, the Presiding Officer’s date of appointment to the rank of magistrate was 1 November 2004. Thus the date of services as a magistrate exceeded the required dates as

determined in section 302 of the CPA. Accordingly the sentence imposed is in accordance with justice and do not need to be tampered with.

[7] Subsection (3) of s302 of the CPA provides that subsection (1) shall apply- (a) with reference to a sentence which is imposed in respect of an accused who was not assisted by a legal adviser. The accused throughout the trial was legally represented by Adv. Shuping. Therefore the section 302(3) is not applicable in this instance.

[8] Section 64 of the Drug and Drug Trafficking Act 140 of 1992 (the DDTA) provides that: "Jurisdiction of Magistrates Courts – a magistrate 's court shall have jurisdiction- (a) to impose any penalty mentioned in section 17, even though that penalty may exceed the punitive jurisdiction of a magistrate's court; and (b) to make any order referred" to in section 35(1), even though the amount payable under that order may exceed the civil jurisdiction of a magistrate court."

[9] I therefore conclude that the learned magistrate in terms of section 302 has the necessary jurisdiction to impose the sentence and with regard to section 64 of the DDTA, the court has the necessary jurisdiction to impose the said sentence.

[10] In the result thereof, I make the following order:

1. The conviction shall stand.
2. The sentence imposed by the trial court is confirmed.

S. CHESIWE, J

I CONCUR

C. REINDERS, J