



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

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

Review number: R169/2019

In the review between:

THE STATE

and

THAMSANQA ABEDNEGO MSOMI

CORAM: LOUBSER, J *et* MURRAY, AJ

HEARD ON: 7 NOVEMBER 2019

JUDGMENT BY: LOUBSER, J

DELIVERED ON: 7 NOVEMBER 2019

- [1] This matter came before me in the form of a Special Review in terms of Section 304(4) Criminal Procedure Act 51 of 1977. The accused was convicted in the Villiers Magistrate's Court for Dealing in 300 kg of Dagga in contravention of the provisions of Section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992. He was sentenced to a fine of R 20 000-00 or 3 years imprisonment, half of which was suspended for 5 years on certain conditions. The dagga was also declared forfeited to the State.
- [2] In submitting the matter for a review of the proceedings, the Head of the Court informed that he was absent with sick leave when the case of the accused was heard by a relief magistrate. Upon his return from his sick leave, he went through the cases that were finalized in his absence, and he noticed that an incompetent sentence had been imposed in the present matter. He referred the reviewing Judge to the provisions of Section 17(e), read with the provisions of Section 13(f) of the said Act. He also referred to the case of **S v Ramone 2013 (2) SACR 596 (FB)**.
- [3] A first glance at the above mentioned Sections already shows that the sentence imposed is incompetent and that imprisonment without the option of a fine must be imposed for dealing in dagga. That imprisonment can be suspended by the court, but the court cannot give the alternative of a fine for that imprisonment. (See the **Ramone** – case, *supra*, at 598c). It is also clear from the provisions in question that a fine may be imposed, but then only in addition to the imprisonment, and not as an alternative thereto.
- [4] It speaks for itself that the sentence imposed by the relief magistrate is therefore incompetent and must be replaced with a correct sentence. In imposing the correct sentence, I will

endeavour not to deviate from the effect of the sentence which the trial Magistrate had in mind. It needs mentioning here that the Magistrate allowed the fine to be paid by the accused in monthly payments of R 1 000-00 each.

[5] The following order is therefore made:

1. The conviction is confirmed.
2. The sentence imposed by the Magistrate is set aside and replaced with the following:

“The accused is sentenced to a fine of R 10 000-00 or 18 months imprisonment. In addition, the accused is sentenced to 18 months imprisonment, wholly suspended for five years, on condition that he is not convicted of a contravention of Section 5(b) or 4(b) of Act 140 of 1992, committed during the period of suspension.”

3. The fine may be paid in payments of R 1 000-00 before the end of each following month until paid in full.
4. The accused is not declared unfit to possess a firearm under Section 103(1) of the Firearms Control Act 60 of 2000.
5. The sentence is deemed to have been imposed on 17 September 2019.
6. The dagga concerned is declared forfeited to the State.

P.J. LOUBSER, J

I concur:

H. MURRAY, AJ