



**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 No.: R347/2018

In the review of:-

THE STATE

And

RHENNYN MAKAM HOFFMEESTER

CORAM: MUSI, AJP

JUDGMENT BY: MUSI, AJP

DELIVERED ON: 24 December 2018

[1] This matter was referred on special review by the acting senior magistrate, Bloemfontein.

[2] The accused was convicted of contravening section 4(b) of Act 140 of 1992 – possession of dagga. He was sentenced as follows:

“Today I consider R300 or 15 days, suspended for 3 years to be an appropriate sentence, which I will then suspend... is suspended for 3 years on condition that you are not found guilty of contravention of section 4(b) Act 140 of 1992 during the period of suspension.”

[3] The acting senior magistrate correctly points out that the condition of suspension is too wide and vague. If the accused is in future convicted for contravening section 4(b) of Act 140 of 1992 which was committed before he

was convicted for this offence this suspended sentence could be put into operation.

- [4] The accused would obviously be prejudiced. The sentence ought to be amended.
- [5] The acting senior magistrate further requests that the conviction be set aside due to the decision of the Constitutional court in **Minister of Justice and Constitutional Development v Prince** (CCT108/18 [2018] ZACC 30).
- [6] This accused was sentenced on 12 September 2018. The Constitutional court judgment was delivered on 18 September 2018. The order is clear and unambiguous that the qualified invalidity of section 4(b) is only with effect from the date of the handing down of the judgment of the Constitutional court.
- [7] The accused admitted that he possessed dagga. The weight thereof is of no moment.
- [8] The conviction is therefore in order and is confirmed.
- [9] The sentence is amended to read as follows:
R300.00 or 15 days imprisonment which is suspended for 3 years on condition that the accused is not convicted of contravening section 4(b) of Act 140 of 1992 committed during the period of suspension.

C. J. MUSI, J