

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 102/2013

In the review between:-

THE STATE

and

TSHEDISO KHOPJWA

CORAM: LEKALE, *Jet* PHALATSI, AJ

JUDGMENT BY: PHALATSI, AJ

DELIVERED ON: 30 MAY 2013

- [1] This case came to us by way of special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977 ("CPA").
- [2] The accused was convicted of contravention of section 4(b) of Act 140 of 1992, for being in possession of 3 kg dagga after pleading guilty in terms of section 112(1)(a) of the CPA, in the Ficksburg District Court.
- [3] He was fined R600,00 or 3 (three) months imprisonment, plus 6 (six) months imprisonment wholly suspended for a period of 2 (two) years on condition that the accused is not

convicted of contravention of section 4(a) and (b) of Act 140 of 1992, committed during the period of suspension.

- [4] The learned magistrate states the following as a reason for referring this matter for special review.

“I have decided to refer the matter to the Honourable Judge to rectify the sentence. This stems from the fact that the legislation that governs section 112(1)(a) does not allow me to impose a sentence of direct imprisonment hence I concede the 6 months that I impose as further sentence exceeds the penalty clause. I further concede that the sentence as it stands is irregular.”

- [5] I concur with the sentiments expressed by the learned magistrate, and, in the premises, make the following order:

5.1 The conviction stands.

5.2 The sentence imposed by the magistrate is set aside and replaced with the following:

“The accused is sentenced to 3 (three) months imprisonment or a fine of R600,00.”

5.3 The sentence is antedated to 20 February 2013, being the date on which the sentence was passed in the Court *a quo*.

N.W. PHALATSI, AJ

I concur.

L.J. LEKALE, J

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