

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Special Review No. : 74/2013

In the review between:

THE STATE

versus

BUHLE MDEBELE

CORAM: LEKALE, J *et* MHLAMBI, AJ

JUDGMENT BY: MHLAMBI, AJ

DELIVERED ON: 11 JULY 2013

- [1] This matter came before us by way of special review in terms of section 304(4) of Criminal Procedure Act 51 of 1977. On 30 October 2012 the accused, who was legally represented, appeared before the Bloemfontein Magistrates' Court on the charge of contravening the provisions of section 5(b) read with sections 1, 13, 17, 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 (the Drugs Act) in that she dealt in 9,270kg of cannabis. She pleaded guilty and was, thereupon, convicted and sentenced to 3(three) years imprisonment or R60 000 (sixty thousand rand) fine.

- [2] The trial magistrate has since discovered that the sentence is not in consonance with the provisions of section 17(e) of the Drugs Act and requests that
- “...the Honorable Judge confirms the conviction, and set aside the sentence and impose the appropriate sentence as prescribed by section 17(e)”**
- [3] I am in respectful agreement with the learned magistrate that the sentence is not competent insofar as section 17(e) of the Drugs Act provides for mandatory prison sentence not exceeding 25 years without the option of a fine, which may be suspended in whole or in part, or for the imposition of such a custodial sentence together with a fine, in the discretion of the court, as a further sentence. (See **S v TA GCOBA** [2010] ZAKZPHC 75)
- [4] The sentence is, therefore, not in accordance with justice while the conviction cannot be faulted regard being had to the section 112(2) statement submitted for and by the accused.

ORDER

- [5] The conviction is confirmed but the sentence is set aside and in its place and stead is substituted the following:

“The accused is sentenced to 12 months imprisonment and a further R40 000 (fourty thousand rand) or 24 months imprisonment which is suspended in whole for three years on

condition that the accused is not found guilty of dealing in dagga during the period of suspension."

[6] The sentence is antedated to 30 October 2012.

JJ MHLAMBI

I concur.

LJ LEKALE, J

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