

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 430/2012

In the review between:-

THE STATE

and

MAMODIEHI MAKHALANYANE

CORAM: KRUGER, J *et* THAMAGE, AJ

JUDGMENT BY: KRUGER, J

DELIVERED ON: 22 NOVEMBER 2012

[1] This is a special review sent by the magistrate at Ficksburg.

The accused pleaded guilty to and was convicted on charges of -

- (1) possession of dagga, a contravention of section 4(b) of Act 140 of 1992; and
- (2) not having a valid passport, a contravention of section 49(1)(a) of Act 13 of 2002.

The two charges were taken together for purposes of sentence. A fine of R300,00 (three hundred rand) or 30 (thirty) days imprisonment was imposed, together with

imprisonment of 6 (six) months suspended for five years on condition that she is not convicted of a contravention of section 5(b) of Act 140 of 1992 committed during the period of suspension. The accused was legally represented.

[2] Subsequently the magistrate realised that the sentence was inappropriate, because the two offences are unrelated and each is governed by its own statute, which differs from the other.

[3] The accused pleaded guilty to a charge of possession of 2,75 kg of dagga, a contravention of section 4(b) of Act 140 of 1992. The reference to section 5(b) in the conditions appears to be inappropriate, but an amendment of the conditions of suspension to section 4(b) would embrace an increase in the sentence, which cannot be done on review in these circumstances. The two convictions should not have been taken together for purposes of sentence. The J4 indicates that the fine was paid and the accused was released. The J15 indicates that the accused is a Lesotho National. It might be difficult to trace her. In the

circumstances it would be appropriate for this court to rectify the sentence, as the magistrate requests.

[4] **ORDER**

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

Count 1:

R300,00 or 30 (thirty) days imprisonment, plus 6 (six) months imprisonment wholly suspended for five years on condition that the accused is not convicted of a contravention of section 5(b) of Act 140 of 1992 committed during the period of suspension. The dagga is forfeited to the State.

Count 2:

Accused is cautioned and discharged.

A. KRUGER

I agree.

S.J. THAMAGE, AJ