

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No.: 23/2011

In the case between:

THE STATE

and

MAMOTSEPA CALEXTINE THENE

CORAM: KRUGER, J *et* VAN DER MERWE, J

JUDGMENT: VAN DER MERWE, J

DELIVERED ON: 31 MARCH 2011

[1] The accused was correctly convicted of giving him 15,7kg dagga in contravention of section 5(b) of Act no. 140 of 1992. The accused admitted that she travelled from Lesotho in order to sell the dagga at Pietermaritzburg and that she was apprehended after crossing the border from Lesotho into South Africa. The accused was sentenced to R10 000,00 or 20 months imprisonment and in addition thereto a further 12 months imprisonment wholly suspended for 5 years on condition that the accused is not convicted of contravening section 5(b) of Act no 140 of 1992 committed

during the period of suspension.

- [2] Not only is the sentence heavier than usually imposed for dealing in a relatively small quantity of dagga, but the circumstances of this case called for a measure of mercy. The magistrate's reasons for sentence indicate that this was not realise and that the prevalence of dealing in dagga in the area of jurisdiction of the magistrate was over emphasised.
- [3] The accused is a citizen of Lesotho. She is 42 years of age. She has been a widow for about 10 years. She _____ for her five children, aged between 12 and 21 years. She earns approximately around R600,00 per month by cleaning other peoples gardens. She is a first offender. She pleaded guilty and frankly explained how she became involved in this crime as follows:

“The reason why I got involved in committing this crime, Your Worship, was to try and supplement my (indistinct) earnings and due to the fact that I am having a lot of children whom it is difficult to maintain. One of the children is doing form C. One of the children is currently at the driving school. The owner of the business demanded to be paid an amount of R2 000,00

and I realised that my wages were sufficient for all those expenses. I saw other successfully selling dagga, so I decided to take a chance too. The owner of the driving school business allowed my child to attend on credit. The agreement between us is that I am supposed to pay the amount of R2 000,00 by December and that is why I decided to commit this offence and earn extra money to meet my expenses, Your Worship. My children were suffering from hunger. I didn't have money to buy them cloths. That is all, Your Worship."

- [4] In my view a sentence of R4 500,00 or 9 months imprisonment as well as a further 9 months imprisonment conditionally suspended is appropriate in the circumstances in this case.
- [5] The sentence is set aside and replaced with a sentence of R4 500,00 or 9 months imprisonment as well as a further 9 months imprisonment wholly suspended for a period of 5 years on condition that the accused is not convicted of a contravention of section 5(b) of Act no. 140 of 1992 committed during the period of suspension. The sentence must be deemed to have been imposed on 16 November 2010.

C. H. G. VAN DER MERWE, J

I concur.

A. KRUGER, J

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