

IN THE HIGH COURT OF SOUTH AFRICA
[TRANSCVAAL PROVINCIAL DIVISION]

9/10/09
CASE NUMBER: A1046/06

APPEAL NO: 142/06

In the matter between

T MAKAMBILWA

M HADIZ

L CHINAKWE

REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED:
DATE: SIGNATURE:

FIRST APPELLANT

SECOND APPELLANT

THIRD APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

KEMP, AJ
ELS, AJ

5 DECEMBER 2007

INTRODUCTION

- [1] On 22 June 2006 and in the Piet Retief Regional Court the Appellants pleaded guilty to a number of charges of dealing in drugs and in possession of drugs.

- [2] T Makambilwa, accused number 2 [Appellant number 1] pleaded guilty to :

- 2.1 Dealing in 9 ecstasy tablets, and
- 2.2 dealing in 0.19 grams of cocaine (half moon crack cocaine) on 3 November 2004. Both are drugs as described in schedule 2 part 3 and 2 respectively of Act 140 of 1992 (charge number 5).

- [3] On the same day M Hadiz accused number 3 – Appellant number 2, pleaded guilty to :

- 3.1 Dealing in 50 ecstasy tablets; and
- 3.2 Dealing in 2.18 grams of cocaine (also known as half moon rock cocaine),

Both are drugs as described above (charge number 1). The same Appellant pleaded guilty on the same day to :

- 3.2.1 Dealing in 210 ecstasy tablets; and
- 3.2.2 dealing in 2,49369 grams cocaine (half moon rock cocaine) (charge number 8)

on 3 November 2004.

[4] Mr Jungbluth acting on behalf of Appellants 1 and 2 terminated Adv Smit's mandate to argue the appeals and we were requested to postpone their appeals. After consideration we grant the application with the result that the 1st and 2nd Appellants' appeals are postponed *sine die*.

[5] Appellant Three L Chinakwe did not file heads of argument in time and we only received the heads on the day when the appeal was heard. We decided to condone it since we have read the record and decided that we should deal with his appeal.

[6] He pleaded guilty to :

6.1 Dealing with 22 ecstasy tablets (charge number 3); and

6.2 selling 0,34 gram cocaine (half moon rock cocaine) (charge number 4).

[7] All three the Appellants were sentenced to 8 years imprisonment.

[8] This appeal is against sentence only.

[9] It is my opinion that seen the provisions of Section 17(E) of the Act the Magistrate quite correctly accepted the evidence of Inspector DB Lombaard. However the evidence of Riana Phelodia, which obviously

cannot be called an expert, did not take the matter any further than factually confirming the widespread use of illegal drugs.

[10] The statement by the Magistrate:

"Miskien moes die Staat die persoon geroep het wat primêr met hierdie mense gewerk het om vir die hof te kom sê hoekom is daar hierdie afleiding gemaak en hoekom word dit gesê."

Record : Page 120 lines 7 – 9.

does indicate that there is a measure of uncertainty about the prevalence of the crime and that the evidence of Phelodia should be carefully considered.

[11] For purposes of this crime Appellant No 3 should be considered as first offenders.

[12] In my opinion dealing in drugs is a most reprehensible crime. Sympathy must be had for people who flee their own countries to avoid repression and violence but for them to come and sow misery in our own beloved country should be visited with the penalties of the land.

[13] We have carefully considered the sentence of 8 years direct imprisonment and considered it in comparison to the 25 years that

could have been imposed. We do feel however that in the circumstances a part of the sentence should have been suspended.

- [14] It follows that we uphold the appeal against the sentence to the extent that 3 years of the 8 years imprisonment imposed by the Magistrate is suspended. The sentence is as follows : 3rd Appellant is sentenced to 8 years imprisonment of which 3 years is suspended for a period of 5 years on condition that 3rd Appellant is not found guilty during the period of suspension of dealing with drugs as described in Schedule 2 par 2 or 3 in terms of Act 140 of 1992.


KEMP, AJ

I AGREE,


ELS, AJ