

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Appeal No. : 18/2005

In the appeal between:-

DANIël ELLIOT NDABA

Appellant

versus

THE STATE

Respondent

CORAM:

VAN ZYL J *et* MOCUMIE AJ

HEARD ON:

18 FEBRUARY 2008

DELIVERED ON:

21 FEBRUARY 2008

JUDGMENT BY:

MOCUMIE AJ

JUDGMENT : APPEAL

[1] The appellant was convicted in the Regional Court, Bethlehem on a charge of contravention of section 5(b) of the Drugs Trafficking Act, 140 of 1992, in that he dealt in 147.25 kilograms of dagga. He was sentenced to eight years imprisonment on 22 April 2005.

- [2] He now appeals against his sentence only.
- [3] The undisputed facts can be summarised as follows:

On 2 October 2000 the appellant was arrested upon entering South Africa from Lesotho through the Clarens-Fouriesburg border post. He was found in possession of five bags containing dagga. He intended to re-sell the dagga in question to gain extra income. His defence that he was not aware of the dagga was rejected by the trial court.

- [3] The trial court described the crime as a very serious offence which has a very devastating effect on the society, afflicting the most vulnerable, those that are drug dependent and are addicts. The appellant is not a first offender as he was convicted of the same offence in 2000. He was 64 years of age in 2005 and a pensioner providing for his two minor children. He is sickly. Before sentence was imposed he had suffered two strokes and was cared for by his unemployed wife at their home.

- [4] This is one of the most serious and rife offences committed in this country especially through border posts. That the appellant should be punished heavily is clear. In my view correctional supervision will not be an appropriate sentence

in this case. At the same time it seems to me in these circumstances the sentence the trial court imposed, is so severe that the Appeal Court may intervene.

- [5] Just as a word of caution, the Regional Magistrate and prosecutor in this case are advised to read Du Toit et al: **Commentary on the Criminal Procedure Act 51 of 1977** and cases referred to at 28 – 10L under the heading “**Also for dealing in LSD**” with reference to the imposition of correctional supervision.

- [6] In the result the sentence imposed by the Regional Magistrate is set aside and is substituted by the following:

- “1. In terms of section 276(1)(i) of the Criminal Procedure Act, 51 of 1977, accused is sentenced to 5 (five) years imprisonment.***
- 2. In terms of section 282 of the Criminal Procedure Act, 51 of 1977, the sentence is antedated to 22 April 2005.”***

B.C. MOCUMIE, AJ

I concur.

C. VAN ZYL, J

On behalf of appellant:

Adv. T.B. van Rensburg
Instructed by:
Legal Aid Board
KROONSTAD

On behalf of respondent:

Adv. D.W. Bontes
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

/sp