

IN THE HIGH COURT OF SOUTH AFRICA

(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 424/2007

In the case between:

THE STATE

and

NTSHEPENG CLAURINA KATILE

CORAM:

MOCUMIE J *et* FISCHER AJ

JUDGEMENT:

MOCUMIE, J

DELIVERED ON:

30 APRIL 2008

[1] This is a review matter in terms of section 302 read with 304 of the Criminal Procedure Act of 51 of 1977. (*“the Act”*). The accused was charged with contravention of section 5(b) the Drug Trafficking Act 140 of 1992 (*“the Drug Trafficking Act”*). She pleaded guilty and was convicted as charged. She was sentenced to 18 months imprisonment which was wholly suspended for 5 years on certain conditions. In addition the

Court imposed R3000,00 or 300 days imprisonment. She was unrepresented.

[2] My Brother **Fisher AJ** directed a query to the Magistrate which entails the following:

“Die beskuldigde is ‘n vonnis van 18 maande gevangenisstraf wat opgeskort is ,opgele en daarbenewens ook beboet met R3000,00 of 300 dae gevangenisstraf.

1. *Kan dit aanvaar word dat die hoof doel was om die beskuldigde uit die tronk te hou?*
2. *Tot welke mate,indien enigsins is die veriestes en beginsinsels soos vervat in die ondergemelde gesag nagekom?Volle besonderhede word verlang aangesien dit uit die oorkonde blyk dat die beskuldigde in ieder geval tronkstraf sal moet uitdien.Sien in hierdie verbaand **Sv Sithole** 1997 2 SA 67 (A) te 69G en verder ook **R v Nhlapo** 1954 4 SA 56 (T) te 58G en verder **S v Zwane** 1995 1 SACR 186 (W) te 189a en verder”.*

The Magistrate complied and I thank him or her for the reasons.

[3] Notwithstanding the reasons advanced I am of the view that in

this case the Magistrate overemphasized the interests of the society and did not attach sufficient weight to the strong personal circumstances of the accused. I am therefore entitled to interfere with the sentence in the manner set out below.

[4] In the circumstances I make the following order:

4.1 The conviction of the accused is hereby confirmed.

4.2 The sentence imposed by the Magistrate is set aside and substituted with the following:

“The accused is sentenced to R3000, 00 (three thousand rand) or 24 (twenty four) months imprisonment of which R1500,00 or 12 (twelve) months imprisonment is suspended for 3 (three) years on condition that the accused is not convicted of contravention of section 5 (b) the Drug Trafficking Act 140 of 1992 committed during the period of suspension.”

**4.3 In terms of section 282 of the Criminal Procedure Act
51 of 1977, the sentence is antedated to 29 January
2008.**

B. C. MOCUMIE, AJ

I concur.

P. U. FISCHER, AJ

/em