

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

Case No.: 182/2008

In the case between:

THE STATE

and

RAMATEME RAMATEME

CORAM:

MOCUMIE, J *et* MOLEMELA, AJ

JUDGEMENT:

MOCUMIE, J

DELIVERED ON:

26 JUNE 2008

REVIEW JUDGEMENT

[1] The matter came before me on automatic review in terms of section 302 read with 304 of the Criminal Procedure Act 51 of 1977 (“the Act”). The accused appeared in Ficksburg Magistrate Court on 7 January 2008 on a charge of contravention of section 5(b) of the Drug Trafficking Act 140 of 1992 (the Drug Trafficking Act). On 7 January 2008 he was convicted as charged and sentenced to 4 years imprisonment of which 1 year was suspended on certain conditions.

[2] I was of the view that the sentence was too harsh and sent a

query to that effect. The Magistrate supplied his comments.

[3] The accused pleaded guilty to dealing in dagga and was correctly convicted. The issue is whether the Magistrate exercised his discretion judiciously when sentencing the accused to the aforementioned sentence. It is trite that sentencing is a function that lies within the discretion of the trial court. See **R v Maphumalo and Others** 1920 AD 56; **S v Rabie** 1975 (4) SA 855 (A) and **S v Barnard** 2004 (1) SACR 191 (SCA).

[4] The accused is a 30 year old first offender. He was arrested with two other people on 5 January 2008. They appeared for the first time before the court on 7 January 2008. He immediately took responsibility for his wrongful deed and pleaded guilty. The prosecutor consequently withdrew the charge against the others. He is not employed. He is single with dependants. He put all the circumstances that led him to commit this offence before the court.

[5] It is clear from the record, including the presiding officer's

reasons for sentence that considerable weight was placed on the interests of the society in total disregard of all other important factors including the factors enumerated in paragraph 2 above.

[6] The Presiding Officer has verily acceded that having read recent decisions dealing with sentencing of drug dealers, he was inclined to a sentence different to the one imposed on 7 January 2008.

[7] It is understandable for presiding officers who are dealing with cases of this nature to be exasperated and at worst despondent when it comes to imposition of appropriate sentences, which would be seen by the community as effective sentences. It is however important to consciously refrain from imposing sentences to impress the community or sacrifice an individual accused with favourable mitigating factors at the altar of deterrence. That is what makes a presiding officer impartial. Each accused that appears before the court is an individual, with his or her own unique circumstances which can never be the same as the next accused who has committed

the same offence. Consistency in the imposition of sentence to send a message that the commission of a particular offence will not be tolerated should not be allowed to displace the discretionary powers of a presiding officer in imposing individualised, effective and appropriate sentences.

[8] In my view the presiding officer misdirected himself in concluding that the sentence aforementioned was the only suitable sentence to impose on this accused in these circumstances.

[9] The last aspect which the presiding officer was not given a opportunity to address and comment on is the provisions of section 103(1) read with (2) and (3) of the Firearms Control Act 60 of 2000. For the sake of finality and without creating a possibility of any prejudice to the accused I will deal with it in this judgment instead of remitting the matter to the presiding officer to deal with it as set out in the Act and in numerous cases including **S v LUKWE** 2005(2) SACR 578 (W); **S v SMITH** 2006 (1) SACR 307 (W) at para [8] and **S v MAAKE** 2007 (1) SACR 403 (T).

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

ORDER:

10.1 The conviction of contravention of section 5(b) of the Drug Trafficking Act 140 of 1992 is confirmed.

10.2 The sentence imposed by the Magistrate on 7 January 2008 is set aside and replaced by the following:

“2(two) years imprisonment of which 1 year and 6 months are suspended for five years on condition that the accused is not convicted of contravention of section 5(b) of the Drug Trafficking Act 140 of 1992 committed during the period of suspension.”

10.3 In terms of section 103 of action 60 of 2000 the accused is deemed to be unfit to possess a firearm.

10.4 This order is to be brought to the attention of the Commissioner of Correctional Services where the

accused is placed for immediate release.

B. C. MOCUMIE, J

I concur.

M. B. MOLEMELA, AJ

/em