

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

Review No.: 418/08

In the review between:

THE STATE

and

PAPI JOHANNES MAHLANGU

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

JUDGEMENT: EBRAHIM, J

DELIVERED ON: 7 AUGUST 2008

[1] This is a review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977. The accused was convicted of a contravention of section 4(b) of the Drugs and Drug Trafficking 140 of 1992 for being in possession of 21 grams of cannabis.

[2] The presiding officer who was an acting magistrate at the time convicted the accused on his plea of guilty in terms of section 112(1)(a) of the Criminal Procedure Act.

[3] The presiding officer then proceeded to sentence the accused to a term of 60 (sixty) days imprisonment wholly suspended for three years on conditions, which is an incompetent sentence in light of the provision of subsection 112(1)(a)(i).

[4] The proceedings are clearly not in accordance with justice. Accordingly it is ordered that the sentence be set aside and substituted with the following:

A sentence of R300,00 or 30 (thirty) days imprisonment is imposed, wholly suspended for 3 (three) years on condition that the accused is not convicted of a contravention of subsection 4(b) of the Drugs and Drug Trafficking Act 140/1992 committed during the period of suspension.

S. EBRAHIM, J

I concur.

C.H.G. VAN DER MERWE, J