

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

Special Review No. : 457/08

In the review between:

THE STATE

versus

MBUSO SIPHIWE MAHLOBO

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

JUDGMENT: EBRAHIM, J

DELIVERED ON: 7 AUGUST 2008

[1] This is a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977.

[2] The accused was convicted in the magistrates court for the district of Harrismith of contravening section 5(b) of the Drugs and Drug Trafficking Act, 1992 (Act 40 of 1992) as amended and sentenced as follows:

“Fined R4 000,00 or 8 (eight) months imprisonment, half of which is suspended for 3 (three) years on condition that the accused is not again convicted of section 5(b) of Act 140 of 1992 committed during the period of suspension. In terms of section 103(1)(k) of Act 60 of 2000 accused is declared unfit to possess a firearm. Dagga forfeited to the State.”

- [3] The accused is at present in custody serving this sentence. The sentence is incompetent as the learned magistrate failed to impose direct imprisonment as required by the penalty provisions contained in section 17(e) of Act 140 of 1992. That being so, I am of the view that the proceedings are not in accordance with justice.
- [4] Accordingly the conviction is confirmed but the sentence set aside and the matter is referred to the magistrate to sentence afresh after hearing the accused.

S. EBRAHIM, J

I concur.

C.H.G. VAN DER MERWE, J

/sp