

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

Review No. : 523/2008

In the review between:-

THE STATE

versus

RAPITSO MICHAEL HLAHELE

CORAM: MOCUMIE, J *et* MOLOI, AJ

JUDGMENT BY: MOCUMIE, J

DELIVERED ON: 19 NOVEMBER 2008

[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 CPA”). Two accused persons appeared in the Senekal Magistrate’s Court on 23 July 2008 on a charge of contravention of section 5(b) of the Drug Trafficking Act, 140 of 1992, (“the Drug Trafficking Act”), dealing in 61 kilogram of dagga. On 6 August 2008 accused 2 then, Mr. Rapitso Michael Hlahele, pleaded guilty and was convicted as charged. He was sentenced to 36 (thirty six) months

imprisonment of which 8 (eight) months were suspended for 5 years on certain conditions.

[2] I was of the view that the sentence was too harsh and sent a query to that effect. The presiding officer supplied his comments.

[3] The accused pleaded guilty to dealing in dagga and was correctly convicted. The issue is whether the presiding officer exercised his discretion judiciously when he sentenced the accused to the aforementioned sentence.

[4] It is trite that sentencing is a function that lies within the discretion of the trial court. See **R v Maphumulo and Others** 1920 AD 56; **S v Rabie** 1975 (4) SA 855 (A) and **S v Barnard** 2004 (1) SACR 191 (SCA). A Court of Appeal or review is not entitled to interfere with the imposed sentence unless it is convinced that the sentencing discretion has been exercised improperly or unreasonably. See **S v Pillay** 1977 (4) SA 531 (A) at 534H – 535G. Amongst other varying factors it may be a misdirection for the presiding officer to overemphasize the seriousness of the offence or the

interests of society and underemphasize the personal circumstances of the offender which would warrant the Court of Appeal or review to interfere with the sentence imposed.

[5] The accused's personal circumstances are set out by the presiding officer in his judgment. The accused is a 25 year old first offender. He was arrested with another person on 22 July 2008. He appeared on 23 July 2008 when the matter was postponed to 6 August 2008 whilst they remained in custody. When he appeared 10 days later he immediately took responsibility for his wrongful deed and pleaded guilty. The prosecutor consequently led no evidence against the other accused.

[6] He is not employed. He is unmarried and has no children. He pleaded guilty and put all the circumstances which led him to commit this offence before the court.

[7] 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 paragraphs 5 and 6 above.

[8] It is understandable for a presiding officer who deals with cases of this nature on a daily basis to impose sentences that will send a message to potential offenders and the society that courts will not tolerate the commission of this type of offence. It must, however, be remembered that although prevalence of a crime should be taken as a materially aggravating factor, that should be done only in conjunction with other aggravating factors. This factor must not be overemphasised. See **S v Seoela** 1996 (2) SA 616 (O). Exemplary sentences are basically unjust. Each individual accused that appears before a court must be treated according to his or her own personal circumstances.

[9] In my view the presiding officer misdirected himself in concluding that the only suitable sentence to impose on this accused in these circumstances was a long term of imprisonment without any other option provided for by the Drug Trafficking Act.

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

1. The conviction of contravention of section 5(b) of the Drug Trafficking Act, 140 of 1992, is confirmed.
2. The sentence imposed by the magistrate on 6 August 2008 is set aside and substituted with the following:

“R3 000,00 (three thousand rand) or 12 (twelve) months imprisonment. In addition 12 (twelve) months imprisonment wholly suspended for 5 years on condition that the accused is not convicted of contravention of section 5(b) of Act 140 of 1992 committed during the period of suspension.”

B.C. MOCUMIE, J

I concur.

K.J. MOLOI, AJ