

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

Case No.: 33/2006

In the review between:

THE STATE

and

PIETER MOKOENA

CORAM: WRIGHT, J *et* EBRAHIM, J

JUDGMENT: EBRAHIM, J

DELIVERED ON: 1 FEBRUARY 2007

[1] The accused, a 55 year old male, and inmate of Groenpunt Prison, was convicted of contravening section 4(b) of the Drug Trafficking Act 1992 (Act 140/92) – the possession of 690 grams of Dagga. He pleaded guilty to the charge and was convicted on his plea and sentenced to pay a fine of R3 000,00 or undergo 6 months imprisonment.

[2] The matter was placed by way of ordinary review before me in Chambers and, being of the view that the sentence

was excessive, I requested reasons from the learned Magistrate. These were furnished and, essentially, it appears that the learned Magistrate overemphasized the aggravating features of the case viz the seriousness of the offence and its prevalence in the community or without giving sufficient weight to the personal circumstances of the accused and factors counting in his favour viz that he is not a young man, being age 55 years, that he earns a paltry R60,00 a month as a prison monitor and has a wife and 4 children to support and that he is a first offender in respect of the offence under review.

[4] While I am alive to the fact that the learned Magistrate, quite correctly, regarded the accused's position of trust as a prison monitor, and that he is a long term prisoner as severely aggravating, I am nevertheless of the view that, the sentence imposed was unnecessarily harsh given the mitigating features of the case referred to.

[5] In my view, a sentence of R1 500 or 3 months imprisonment would have satisfied the deterrent aspects of

punishment sought to be emphasized and served by the learned Magistrate.

[6] The conviction is therefore confirmed and the sentence set aside and the following sentence substituted therefore:

A fine of R1 500,00 (one thousand five hundred rand) or 3 (three) months imprisonment.

In so far as it may be relevant, the sentence must be deemed to have been imposed on 3 October 2006.

S. EBRAHIM, J

I concur.

G.F. WRIGHT, J

/em