

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

Review Case No.: 83/2007

In the case between:

THE STATE

and

THABANG JOSEPH MHOSOHANE

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

JUDGEMENT: VAN DER MERWE, J

DELIVERED ON: 1 FEBRUARY 2007

[1] The accused, a citizen of Lesotho, was convicted in the magistrate's court of Ficksburg of three offences, namely first, dealing in 35kg dagga in contravention of section 5(b) of the Drugs and Drug Trafficking Act, Nr. 140 of 1992, second, wilfully hindering members of the South African Police Service in the performance of their duties by resisting arrest in contravention of section 67(1)(a) of the South African Police Service Act, Nr. 68 of 1995 and third,

entering into or remaining in the RSA in contravention of the Immigration Act, Nr. 13 of 2002. The convictions are in order. The three counts were taken together for purposes of sentence and the accused was sentenced to a fine of R2 000,00 or 12 months imprisonment.

[2] The sentence is incompetent in respect of the said first offence, as section 17(e) read with section 13(f) of Act Nr. 140 of 1992 provides that for contravention of section 5(b) a sentence of imprisonment, albeit suspended or with or without a fine and alternative imprisonment, must be imposed. It follows that the sentence is clearly not in accordance with justice. The accused may be prejudiced if the matter is not forthwith dealt with by this Court on review.

[3] The sentence must therefore be set aside and the matter be remitted to the magistrate to impose sentence afresh. For this purpose the accused must be brought before the magistrate and afforded all the rights that a convicted

person has before sentence is imposed on him. When the accused is sentenced afresh, the portion of the previous sentence that has already been served or put into operation, must obviously be taken into account.

- [4] The convictions are confirmed but the sentence set aside and the matter is remitted to the magistrate to be dealt with in accordance with this judgment.

C.H.G. VAN DER MERWE, J

I concur.

C. VAN ZYL, J

