

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

Review No. : 1325/2006

In the review between:-

THE STATE

versus

ROSALIA BALETTE

CORAM: WRIGHT J *et* VAN ZYL J

JUDGMENT BY: WRIGHT J

DELIVERED ON: 1 FEBRUARY 2007

[1] In this matter the accused was convicted of dealing in dagga (the contravention of section 5(b) of Act No. 140 of 1992) and sentenced to a fine of R7 000,00 or 6 (six) years imprisonment with a further 2 (two) years imprisonment suspended for 4 (four) years on appropriate conditions.

[2] With regard to the personal circumstances of the accused it can be mentioned that she made the following submissions.

She was 50 years old and separated from her husband. She has four children who are 25, 18 and 16 years old (the other one died). She is selling second-hand items in the street and earns approximately R1 000,00 per month from the sales. She is an out-patient with high blood pressure which was first diagnosed as low blood pressure and she suffered frequent attacks as a result of this condition which affected her legs. She has two grandchildren who are attending school. She obtained the dagga by exchanging clothes which she sells.

- [3] Important also is the fact that she pleaded guilty and also had no previous convictions.
- [4] The aggravating circumstances are the fact that this is a crime which occurs frequently in the area of jurisdiction of the Court *a quo*. There was also a large amount of dagga involved namely 123,45 kilogram.
- [5] The magistrate referred to the matter of **S v KHANJWAYO**; **S v MIHLALY** 1999 (2) SACR 651 (O). This is however a

matter in which a crime was regulated by section 51 of Act No. 105 of 1997 and where a minimum sentence was applicable. This is not the case in the present matter. A further case which can be referred to is the matter of **S v HLONGWANE** 1998 (1) SACR 221 (O) where 148,25 kilogram dagga was involved. In this matter the accused, a 35 year old first offender, was sentenced to four years imprisonment of which two years was suspended. This was confirmed on appeal. It is significant that a larger amount of dagga was involved in the present matter.

- [6] A further important point is that there must be a balance between the fine imposed and alternative imprisonment. This was pointed out in the matter of **S v KAPENG** 1992 (1) SASV 596 (O). See also **S v MAKORAE** 1997 (2) SACR 705 (O). The following passage on p. 709 b – f of the latter judgment is particularly relevant:

“Wat meer kommentaar vereis is die verhouding tussen die boete en die alternatiewe gevangenisstraf. Dit het in elk geval

geblyk dat die beskuldigde nie eers in staat was om die boete van R3 000 te betaal nie. Selfs al sou die boete dubbel die bedrag wees wat inderdaad opgelê is, sou dit nog 'n relatiewe ligte straf wees in verhouding tot 30 maande gevangenisstraf. Selfs 'n persoon met 'n relatiewe geringe inkomste van ongeveer R6 000 per jaar, sou eerder ten alle koste wou poog om die boete te betaal eerder as om vir twee en 'n half jaar tronk toe te gaan. Die verhouding van boetes wat opgelê word teenoor die alternatiewe gevangenisstraf het nie tred gehou met die waardevermindering van geld nie. (Sien *S v Kapeng* 1992 (1) SACR 596 (O) en die sake daar aangehaal, asook die hersieningsuitspraak in *S v Andries Motsamai* (hersieningsno 132/97).) Dit geld des te meer in 'n geval soos hierdie waar dit vir die landdros duidelik moes gewees het dat die beskuldigde nie in staat sal wees om die boete te betaal tensy hy finansiële hulp van 'n vriend of familielid ontvang nie of oor ander onverklaarde bates beskik wat hy te gelde kon maak.”

[7] In this matter alternative imprisonment of six years is totally out of proportion with a fine of R7 000,00.

[8] Considering all the factors I consider the sentence imposed to be inappropriate to such an extent that it should be

interfered with. The sentence mentioned below would be appropriate in view of all the circumstances of this case as appears from the record and the magistrate's written reasons.

- [9] Accordingly the conviction is confirmed and the sentence set aside and substituted with the following sentence:

A fine of R7 000,00 (seven thousand rand) or 30 (thirty) months imprisonment plus a further 2 (two) years imprisonment wholly suspended for 4 (four) years on condition that the accused is not convicted of contravening section 5(b) of Act 140 of 1992 committed during the period of suspension.

The sentence must be deemed to have been imposed on 30 October 2006.

G.F. WRIGHT, J

I concur.

C. VAN ZYL, J

/sp