

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

Appeal No. A188/07

In the appeal between:

TIEHO MOEKETSI

Appellant

versus

THE STATE

Respondent

CORAM:

EBRAHIM, J *et* MOLEMELA, AJ

JUGDMENT:

EBRAHIM, J

DELIVERED ON:

10 AUGUST 2007

[1] The appellant was convicted on 2 February 2007 of contravening section 5(b) Act 140 of 1992 (the Abuse of Dependence-producing Substances Act 1992) on account of dealing in 679,25 kilograms of dagga. He pleaded guilty and was convicted on his plea and sentenced to 8 (eight) years imprisonment. He appeals against his sentence on the ground that the learned sentencing magistrate gave undue consideration to the seriousness of the offence to the

detriment of his own personal circumstances. In my view there is substance in the appellant's criticism as the sentence of 8 (eight) years imprisonment imposed certainly induces a sense of shock and on that basis this court is at large to interfere with the sentence imposed despite the lack of misdirection on the part of the learned sentencing magistrate.

- [2] Whilst it is extremely important that the seriousness of the offence and the interests of the community be given due weight, in this case the learned magistrate failed to have regard to the compelling personal circumstances of the appellant *viz*: the appellant is a mature man, 43 years of age, with family commitments and dependants and that no doubt being alive to his responsibilities, elected to come clean and pleaded guilty. An added consideration is the remorse that he showed for his criminal act by pleading guilty. When one adds to it the fact that the appellant is a first offender, these personal considerations become extremely weighty so that any sentence which is imposed must reflect that these

considerations have been suitably accounted for. Having regard to this, I am of the view that an appropriate sentence in this matter would be one of 6 (six) years imprisonment two of which are suspended for 5 (five) years on condition that the appellant is not convicted of the offence of dealing in dagga, that is contravening section 5(b) of Act 140 of 1992 committed within the period of suspension. Such a sentence would adequately give effect to both the retributive and deterrent aspects of punishment, whilst reflecting the court's benevolent attitude towards his personal circumstances, his clean record and his willingness to confess his guilt. The sentence is deemed to be imposed on 2 February 2007.

S. EBRAHIM, J

I concur.

M.B. MOLEMELA, AJ

On behalf of appellant: Adv. R. van Wyk
Instructed by:
Molenaar, Griffiths & Melato
Sasolburg

On behalf of respondent: Adv. K.J.A. Ntimutse
Instructed by:
Director Public Prosecutions
BLOEMFONTEIN

/sp