

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

Review No. : 775/07

In the review between:-

THE STATE

versus

MASIKANE JOSEPH MOLOKE

CORAM: VAN ZYL, J *et* MOLEMELA, AJ

JUDGMENT BY: MOLEMELA, AJ

DELIVERED ON: 20 SEPTEMBER 2007

[1] The accused was charged with the offence of contravention of section 4(b) of the Drugs and Drug Trafficking Act, 140 of 1992 being the use or possession of 2 g of dagga. The accused was then sentenced as follows:

“Fined R1000.00 (One Thousand Rands) or 100 (Hundred) days imprisonment which is accused (sic) suspended 3 (Three) years on

condition that accused accused are (sic) not to be found guilty of contravening Section 5(b) or 4(b) of Act 140/1992 committed during the period of suspension.”

- [2] The matter was then sent to this Court as an automatic review. The record of the proceedings was sent to this Court together with a letter from the magistrate in which the following was stated:

“After imposing a sentence in case A2492/07, S v M.J. Moloke I realized that the sentence as imposed is too harsh and respectfully request you to intervene and impose a suitable sentence.”

- [3] The magistrate, quite correctly, did not declare the accused unfit to possess a firearm – see **S v KOLOBE** 2006 (1) SACR 118 (O).

- [5] With regards to the sentence imposed, I do agree with the magistrate that an intervention is necessary. In the first place, the erroneous inclusion of the word “accused” renders the

sentence somewhat vague. In the second place, the amount of the fine is disproportionately heavy in relation to the alternative period of imprisonment. Thirdly, when consideration is had to the weight of the dagga (2 g), that the accused readily pleaded guilty to the charge and that he was a first offender, the whole sentence seems rather harsh under the circumstances. I would consider a wholly suspended sentence of R500.00 (five hundred rand) or 2 (two) months' imprisonment to be a more appropriate sentence.

- [6] The following order is therefore made:
1. The conviction of the accused is confirmed.
 2. The sentence is set aside and substituted with the following:

A fine of R500.00 (five hundred rand) or 2 (two) months' imprisonment, wholly suspended for 3 (three) years on condition that the accused is not convicted again of contravention of section 4(b) of Act 140 of 1992, committed during the period of suspension.

M.B. MOLEMELA, AJ

I concur.

C. VAN ZYL, J

/sp