

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

Review Case No.: 370/2005

In the case between:

THE STATE

and

MOTLALEPULA SNYMAN HANTSI

CORAM: HANCKE J

JUDGEMENT: HANCKE J

DELIVERED ON: 7 APRIL 2005

According to the J4 form the accused was convicted of contravening Section 4(a) or 4(b) read with Section 1,3,17 to 25 and 64 of Act 140/1992 (possession or use of drugs).

He was sentenced as follows: R3 000,00 or 18 months imprisonment of which R1 000,00 or 6 months imprisonment is suspended for a period of 3 years on condition that the accused is not again convicted of contravening Section 5(b) of Act 140/1992 committed during the period of suspension.

When sending the matter on review, the magistrate stated the following:

“It appears to me that the conviction can either be of contravening Section 4(a) or contravening Section 4(b) of Act 140/1992 and not both.”

I agree with these remarks.

It is apparent from the record of the proceedings that the accused was charged with contravening Section 4(b) of the said Act and that he was found guilty “as charged.”

Although the accused was found in the possession of 1,12kg dagga he is a 41 year old first offender. He earned R700,00 as a driver but he lost his job due to the fact that he was arrested for the present case and spent some time in custody. He is a married man with two children. He uses the dagga for medicinal purposes because he has difficulty in breathing. Apart from the fact that the sentence refers to a contravention of Section 5(b) which is wrong, the sentence also appears to be too severe in the circumstances.

Accordingly the following orders are issued:

1. The conviction is set aside and substituted with the

following:

“Contravening Section 4(a) read with Section 1, 3, 17 to 25 and 64 of Act 140/1992 (possession of dagga).”

2. The sentence is set aside and substituted with the following:

“A fine of R1 200,00 or 6 months imprisonment of which R600,00 or 3 months imprisonment is suspended for a period of 3 years on condition that the accused is not again convicted of contravening Section 4(a) of Act 140/1992, committed during the period of suspension. The sentence is antedated to 23rd March 2005.

S.P.B. HANCKE, J

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