

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

Review Case No.: 642/2005

In the case between:

THE STATE

and

MOLOI EPHRIAM MOHAPI

CORAM: WRIGHT J *et* H.M. MUSI J

JUDGEMENT: WRIGHT J

DELIVERED ON: 17 JUNE 2005

The accused, a 34 year old man, was convicted of the contravention of section 4(b) of Act 140/1992, and more specifically possession of 2kg of dagga. He was sentenced to 36 months imprisonment.

The main reason for this heavy sentence is the accused's previous convictions and the fact, mentioned by the magistrate in his reasons, that the accused testified that he sometimes smokes and sells dagga. He has no less than 11 previous convictions

including 3 convictions of housebreaking and 3 convictions of theft. He also has 4 previous convictions of possession of dagga for which he was sentenced to fines ranging from approximately R100,00 to R900,00. The most serious sentence seems to be one of three months imprisonment without the option of a fine. The present sentence is therefore out of proportion to the crime as well as to the amount of dagga involved.

After considering all the facts including those a mentioned by the magistrate in his reasons and appearing from the record, I consider that the sentence set out below would be more appropriate even taking into consideration the picture of the accused which appears from the previous convictions as well as his evidence. There is no problem with the conviction.

The following order is therefore made:

The conviction is confirmed but the sentence set aside and the following sentence substituted therefore: 18 months imprisonment of which 9 months are suspended for a period of 4 years on the condition that the accused is not found guilty of the contravention

of section 4(b) Act 140/1992 committed during the period of his suspension.

The sentence must be deemed to have been imposed on the 18th of May 2005.

G.F WRIGHT, J

I concur,

H.M. MUSI, J

/em