

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

Review No.: 1086/2005

In the matter between:

THE STATE

and

MOHLEKOA MOHLEKOA

CORAM: EBRAHIM J, *et* BLOEM, AJ

JUDGEMENT: BLOEM, AJ

DELIVERED ON: 7 OCTOBER 2005

[1] The accused appeared in the magistrate's court at Ficksburg where he was charged in terms of the provisions of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) with dealing in dagga alternatively possession of dagga. He pleaded guilty to and was convicted on the charge of possession of dagga after he was questioned in terms of the provisions of section 112(1)(b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). He was

sentenced to pay a fine of R700,00 or 5 months imprisonment.

[2] In my view the accused was properly convicted of possession of 8.4kg of dagga. The conviction should accordingly be confirmed.

[3] The accused is a first offender. He is 18 years of age. He is not schooling. He earns an income of approximately R300,00 per month by washing taxis. With that money he buys groceries for his two siblings who are attending school. The accused and his siblings live with their aunt because their mother left them some time ago. She does not send money to her children.

[4] The possession of dagga is an offence which is regularly committed within the area of jurisdiction of this court. The court has a duty to act against those who make themselves guilty of such unlawful conduct. However the sentence to be imposed on a person convicted of possession of dagga

should befit the offender, the offence and the interests of the community.

[5] The magistrate seems to have paid too much attention to the offence and the interests of the community without paying due attention to the personal circumstances of the accused. Had he properly balanced the above three factors, he would have realised that, given the circumstances of this case, the sentence which he imposed on the accused was too heavy. There is sufficient cause to interfere with the sentence.

[6] In all the circumstances the conviction is confirmed. The sentence is set aside and replaced with imprisonment of 6 months which is wholly suspended for three years on condition that the accused will not be convicted of possession of dagga committed during the period of suspension for which an unsuspended period of imprisonment is imposed.

G.H. BLOEM, AJ

I concur.

S. EBRAHIM, J

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