

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

Review No.: 816/2004

In the review between:

THE STATE

and

PAKISO MOSHESHE

CORAM: **MALHERBE JP**

DELIVERED ON: **1 JULY 2004**

The accused is a 28-year old first offender who pleaded guilty to a charge of dealing in 104,4 kilograms dagga. He was duly convicted and sentenced as follows:

“R8 000 or 24 months’ imprisonment. A further 12 months’ imprisonment wholly suspended for 5 years on condition that the accused is not found guilty of contravening section 5(b) with other section Act 140/1992 during the period of suspension.”

It appears from the record that the accused had bought the dagga in Lesotho and was conveying it in a vehicle in the district of Ladybrand when the vehicle was stopped and searched by the Police. He intended selling the dagga, obviously to make a living as both he and his wife were

unemployed. He had never been to school.

I agree that the option of a fine is appropriate for a first offender. Even if the amount of the fine is effectively beyond an accused's means, the alternative period of imprisonment should be reasonable in relation to the fine. In my view the present case is an illustration where the probable effective sentence is 24 months' imprisonment, which is too long.

Apart from the above, the grammar of the sentence does not make sense. The Magistrate's handwriting is difficult to read. The typed version was obviously not checked thoroughly.

In the premises the following orders are made:

1. The conviction is confirmed.
2. The sentence is set aside and replaced by the following:
"A fine of R8 000 or 12 months' imprisonment. A further 12 months' imprisonment is wholly suspended for 4 years on condition that the accused is not convicted of contravening section 5(b) of Act 140 of 1992, committed during the period of suspension."

J.P. MALHERBE, JP