

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

Review No: 1176/2004

In the review of:

THE STATE

versus

JONAS MATJOI

CORAM: **VAN COPPENHAGEN J *et* WRIGHT J**

JUDGMENT: **VAN COPPENHAGEN J**

DELIVERED ON: **26 AUGUST 2004**

[1] The accused, a 50-year old, unemployed male was arraigned for convening section 4(b) and read with sections 1, 4, 13(d), 17(d), 18, 19, 20, 25, 35, 64 and part 3 of schedule 2 of Act 140 of 1992, i.e. that on 16 June 2004 he was illegally in possession of 13,7 gram of dagga.

He pleaded guilty to the charge and was properly convicted.

A fine of R3 000,00 or 2 years imprisonment was imposed as sentence.

[2] Given the accused unblemished record, age, the quantity of dagga involved and the accused's state of health, I considered the sentence harsh and requested the magistrate to furnish reasons therefore.

[3] A note on the covering sheet of the record of the proceedings confirmed that the fine was not paid by the accused, understandably so, bearing in mind that he is unemployed and of ill health.

[4] The legislature clearly distinguished as far as sentence is concerned between trading in dagga and possession of dagga, a distinction which found pertinent application in judicial pronouncements.

Sentences imposed in other matters for similar offences can at best be considered as informative. Informative as they are, same indicates a far lesser sentence than imposed by the magistrate. (cf.

S v MASIA 1997 (2) SACR 687 O; S v MARKUS 1997 (2) SACR 538 C; S v WILLIAMS 1997 (1) SACR 217 C and S v SOKWELITI 2002 (1) SACR 632.)

[5] The sentence imposed, considering the facts as set out hereinbefore, must be altered and the following order is made.

- 1) The conviction is confirmed.
- 2) The sentence imposed is set aside and replaced by the following:

“A Fine of R500,00 or 4 months imprisonment totally suspended for 3 years on condition that the accused is not during the period of suspension convicted on a charge of contravening section 4(b) of Act 140 of 1992”.

G. VAN COPPENHAGEN J

I AGREE:

G. F. WRIGHT J

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