

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

Review No. : 1593/2004

In the review between:

THE STATE

versus

THABO RAMOHLABI

CORAM: WRIGHT J *et* RAMPAL J

JUDGMENT: RAMPAL J

DELIVERED ON: 18 NOVEMBER 2004

[1] The accused was convicted in the Wepener district court on 29 June 2004 for possession of 4,45 kg of dagga in contravention of section 4(b) Act No. 140/1992. On 12 July 2004 he was sentenced to R4 000,00 or 4 months imprisonment in addition to a prison term of 8 months which

was conditionally suspended for 5 years.

[2] Subsequently the case came on review before Van der Merwe J. He asked the magistrate to furnish reasons for the sentence.

[3] The magistrate responded by saying that the sentence was an appropriate punishment because Wepener was on the border between this province and Lesotho from where the criminals often smuggled dagga into this country as the accused had done. He went on to say that the sentence would teach the accused that crime does not pay.

[4] The following are mitigating factors:

- The quantity of dagga found in the possession of the accused was 4,45 kg.
- He was a first offender.

[5] I am of the opinion that the sentence is shockingly severe and inappropriate in these circumstances. It is not commensurate to the crime committed. I would therefore set it aside.

[6] There is one aspect which I find particularly disturbing. I wish to deal with it before I make an order in this case. The sentence was imposed on 12 July 2004. The magistrate

signed the J4 review form about six weeks later, on 27 August 2004. The registrar received the file from the magistrate on 29 September 2004, over ten weeks after the sentence was imposed. Van der Merwe J's query to the magistrate was written on 30 September 2004. The magistrate's reply thereto dated 1 November 2004 was received by the registrar yesterday on 10 November 2004. All these delays have seriously prejudiced the accused's right of review. The effect of it all is that the intervention of this Court on review becomes a meaningless exercise for the accused. If he was unable to pay the excessive fine, he probably served a longer prison term he was not supposed to have served.

- [7] I do not know the reasons for all these delays. However, I would urge the magistrate to ensure that files for reviews are immediately sent to this Court so that recurrences of this nature can be avoided in the future. I am aware that postal delivery service aggravated the situation to a certain extent, which is so much the reason why reviews should always be

posted in good time.

[8] Accordingly I make the following order.

8.1 The conviction is confirmed.

8.2 The sentence is set aside.

8.3 The sentence is replaced with the following:

The accused is fined R1 500,00 or 3 months imprisonment plus a further 3 months imprisonment which is wholly suspended for 3 years on condition that he is not again found guilty of possession of dagga committed during the period of suspension.

8.4 The dagga in question is declared forfeited to the State.

8.5 The sentence shall be deemed to have been imposed on 12 July 2004.

8.6 Should the accused have paid more than R1 500,00 in respect of the fine; the difference must be repaid to him.

M.H. RAMPAL, J

I concur.

G.F WRIGHT, J

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