

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

Review No: 1594/2004

In the review of:

THE STATE

versus

MATSHIDISO REGINA DONGALA

CORAM: WRIGHT J et VAN DER MERWE J

JUDGMENT: VAN DER MERWE J

DELIVERED ON: 2 DECEMBER 2004

- [1] The accused in this matter was convicted of possession of 11 kilograms of dagga in contravention of section 4(b) of the Drugs and Drug Trafficking Act, no. 140 of 1992. On 12 July 2004 the accused was sentenced to a fine of R4000,00 or 8 months imprisonment and a further 12 months imprisonment wholly suspended for a period of 5 years on condition that the accused is not convicted of contravention of section 4(b)

or 5(b) of Act no. 140 of 1992 committed during the period of suspension. The record of proceedings was received by the Registrar of this Court only on 29 September 2004 and reasons requested the following day, were received in the office of the Registrar on 10 November 2004. No reasons for the delay were furnished. The conviction is in accordance with justice but the sentence, in my judgment, is not.

- [2] In reasons for sentence supplied by the magistrate *inter alia* the following was said:

“Accused was found in possession of 11 kilograms of dagga. Accused was taking the dagga to its destination.

It was clear that accused was not going to use that substance herself. She was either delivering it to someone else or she was going to sell it herself. The accused did not have the necessary certificate or permission from a duly qualified doctor to possess and use that substance.

The street value of the said dagga is estimated at about R11 000-00.”

[3] The aforesaid reasons for sentence of the magistrate contain serious misdirections. The accused pleaded guilty and was at no stage required to explain why she was in possession of the dagga. There is no basis for the finding that the accused was not in possession of the dagga for personal use but possessed it for the purpose for either delivering it to somebody else or to sell it herself. In any event, the accused was charged with and convicted of possession of dagga and can clearly not be sentenced on the basis that she may have dealt in dagga within the definition thereof in section 1 of Act no. 140 of 1992. Also there is no evidential basis on record at all for the aforesaid estimation of the street value of the dagga. It follows that the sentence cannot stand.

[4] The accused is 24 years of age and a first offender. She pleaded guilty. She is single and unemployed but has two children. In all these circumstances I consider a fine of

R1200,00 or 4 months imprisonment to be a suitable sentence.

- [5] The conviction is confirmed but the sentence is set aside and replaced with a sentence of a fine of R1200,00 or 4 months imprisonment, which must be deemed to have been imposed on 12 July 2004.

C.H.G. VAN DER MERWE, J

I CONCUR:

G.F. WRIGHT, J