

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

Review No. : 1667/2004

In the review of:

THE STATE

versus

TEBOHO DANIEL KOLOBE

CORAM: WRIGHT *et* MUSI JJ

JUDGMENT: MUSI J

DELIVERED ON: 9 DECEMBER 2004

The accused was convicted of possession of dagga in contravention of section 4(b) of Act 140/1992 and sentenced to a fine of R1 600,00 or 8 months imprisonment. I asked the magistrate to give reasons for the sentence, in particular for declaring the accused unfit to possess a firearm in terms of section 103 of the Firearms Control Act 60/2000. The magistrate's response was that he had enquired from the accused why he

should not be declared unfit to possess a firearm and the accused had no problem with such order. Indeed the accused had indicated that he had no intention to possess a firearm. The magistrate also said that people who smoke dagga behaved badly and that prevention was better than cure.

With respect, there was no basis for assuming that this particular accused has a propensity for violence or that he was likely to misuse a firearm in the future. As a matter of fact, the offence for which he has been convicted has nothing to do with a firearm or use of violence of whatever nature.

The question I posed was specifically whether it was competent to make the order in question in the circumstances of this case. Section 103(1) of the Firearms Control Act lists the offences in respect of which a person may be declared unfit to possess a firearm. Subsections (h) and (j) are the only ones that may possibly apply to the instant case. Subsection (h) provides for declaration of unfitness in respect of any offence for which an accused has been sentenced to a period of imprisonment without

the option of a fine. This provision is certainly not applicable to the instant case. Subsection (j) relates to any offence involving the abuse of alcohol or drugs. Now the accused has confessed that he kept the dagga found in his possession for purpose of smoking it. There is no indication, however, that he abuses it. It is significant that the subsection says “abuse of alcohol or drugs”. Just as one may drink alcohol without abusing it, so is it that one may smoke dagga without abusing it. It is significant also that possession of dagga has not been included in the offences listed under section 103(1), whereas dealing in dagga is specifically listed under the subsection immediately following subsection (j). In my view, that clearly shows that the legislature could not have intended that unfitness to possess a firearm should befall a person convicted of mere possession of a drug.

Section 103(2) refers to offences listed in schedule 2 to the Act and stipulates that a court convicting a person of such offences, must enquire whether the person is fit to possess a firearm. The only instance that may possibly apply to the instant case is that listed under item 7(a), but then this refers to an offence provided

for in the Firearms Control Act or its predecessor. The accused has not been convicted of a contravention of the provisions of the Firearms Control Act and this provision does not apply to him.

I come to the conclusion that it was not competent to invoke the provisions of section 103 of Act 60/2000. There was no basis for invoking such provision in the instant case. I note also that in declaring the dagga forfeited, the magistrate stated that the dagga is forfeited to the police. I hope that this is a slip of the tongue. It is not the police, but the State to which the dagga must be forfeited.

I do not think that there is any reason to interfere with the fine imposed on the accused and that part of the sentence should be confirmed.

The following order is made:

The conviction of the accused is confirmed and so is the sentence of R1 600,00 or 8 months imprisonment and that the dagga be forfeited to the State in terms of section 23 of Act 140/1992. The

order declaring the accused to be unfit to possess a firearm is set aside.

H.M. MUSI, J

I concur.

G.F. WRIGHT, J

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