

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case no: R 5/25

In the matter between:

THE STATE

and

SIPHO NDABA

Accused

Neutral citation: *S v Ndaba* (Case no R5/25);

Coram: Tlaletsi JP & Lever J

Delivered: 12 September 2025.

Coram: Tlaletsi JP and Lever J

ORDER

The following order is made:

1. The conviction of the accused under the provisions of section 5(b) of the Drugs and Drug Trafficking Act is confirmed.
2. The sentence of the court *a quo* is set aside and replaced with "The accused is sentenced to five (5) years direct imprisonment without the option of a fine."

REVIEW JUDGMENT

Lever J

1. This matter was referred to me on review. It is not clear why as it appears it is not subject to automatic review as the accused was represented by Legal Aid South Africa. There was also no covering letter indicating that a senior magistrate sent it to the High Court on review. When the matter was first referred to me it was evident that certain parts of the transcribed record were missing. After a written enquiry the missing parts of the record were provided. However, the exhibits were still missing.
2. The accused was charged and convicted of dealing in drugs under the provisions of section 5(b) of the Drugs and Drug Trafficking Act¹. The accused was found with 78 mandrax pills. There was a slight discrepancy between laboratory report which listed 76 mandrax pills together with some broken pills and powder. The broken pills and powder may account for the slight discrepancy.

¹ Act 140 of 1992.

3. The evidence placed before the court is that one of the State witnesses testified that the accused told him that the pills were broken in half and each half pill was sold for twenty (20) Rand. There was no other evidence as to the value of the drugs seized from the accused. Assuming this to be correct, the relevant drugs would have a value of three thousand one hundred and twenty (3120) Rand.
4. The evidence in mitigation of sentence placed before the court *a quo* was that at the time of sentencing the accused was 53 years old. He is the only person working in his family and he is providing for the financial needs of his five grandchildren as well. The accused is diabetic and needs medical care for the condition. Accused earns three thousand (3000) Rand per month and receives a SASSA grant of three hundred and seventy (370) Rand per month. The accused also had two (2) previous drug related convictions but these were older than ten (10) years old and the learned trial magistrate treated accused as a first offender for sentencing purposes.
5. The learned trial magistrate quoted the provisions of sections 13(f) and 17(e) of the Drugs and Drug Trafficking Act² verbatim. Despite this the learned trial magistrate from her judgment clearly believed that the minimum sentence was 25 years direct imprisonment. Whereas the said section 17(e) clearly states that any sentence is not to **exceed** 25 years. (my emphasis)
6. Although section 51(2) of the Criminal Law Amendment Act³ (CLAA) was referred to in the charge put to the accused, the learned trial magistrate did not

² As Above.

³ Act 105 of 1997.

consider it in sentencing. Section 51(2) of the CLAA is only applicable if the value of the drugs in the first instance is more than fifty thousand (50,000) Rand or secondly ten thousand (10,000) Rand if the evidence shows a syndicate is involved.

7. Clearly, section 51(2) does not apply because the value of the drugs is far less than the amounts required in the CLAA.
8. On all this information, the learned trial magistrate sentenced the accused to twenty years direct imprisonment without the option of a fine.
9. I am satisfied that the conviction is sound. It is beyond any doubt that there has been a failure of justice on sentencing. Even though I am not sure how this matter came before me I am empowered to deal with this failure of justice by the provisions of section 304(4) of the Criminal Procedure Act⁴.
10. The learned trial magistrate misread and misapplied the provisions of section 17(e) of the Drugs and Drug Trafficking Act. This led directly to the failure of justice outlined above.
11. As the learned trial magistrate indicated and found drugs are having a devastating effect on our communities leading directly to acts of violence that manifest themselves on the trial roll of the magistrate's court concerned. This is an important and legitimate concern. The learned trial magistrate also points out that drugs affect our youth depriving them of both their youth and future prospects in society. Also, a very important concern. The learned magistrate

⁴ Act 57 of 1977.

also correctly points out that drugs are a threat to the very fabric of our society.
Again, a valid concern.

12. Despite all of these valid concerns, the correct balance has to be established in sentencing the accused. There has clearly been a misdirection in the court *a quo* in sentencing the accused. This reviewing court has sufficient evidence before it to pass a just and balanced sentence on the accused.
13. The sentence of the court *a quo* stands to be set aside.
14. In my view a just and balanced sentence in all of the circumstances of the case would be five (5) years direct imprisonment without the option of a fine.

Accordingly, the following order is made:

1. The conviction of the accused under the provisions of section 5(b) of the Drugs and Drug Trafficking Act is confirmed.
2. The sentence of the court *a quo* is set aside and replaced with "The accused is sentenced to five (5) years direct imprisonment without the option of a fine."



L.G. Lever

Judge

Northern Cape Division,

Kimberley

I agree,



A handwritten signature in black ink, appearing to be 'L. P. Tlaletsi', written over a horizontal line.

L. P Tlaletsi

Judge President

Northern Cape Division,

Kimberley