



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

Reportable/Not Reportable

Case no: CA & R 48/2025

In the matter between:

SAMSON VUSI DLAMINI

Appellant

and

THE STATE

Respondent

Neutral citation: *Dlamini v The State* (CA & R 48/2025) (06 February 2026).

Coram: STANTON J et TYUTHUZA AJ.

Heard: 24 November 2025.

Delivered: 06 February 2026.

Summary: Appeal against sentence of 15 years – Drugs and Drug Trafficking Act 140 of 1992 – s 51(2) of the Criminal Law Amendment Act 105 of 1997 incorrectly applied – Section 51(2) not applicable as value of the Methcathinone falls below the thresholds stipulated in Paragraphs (a) and (b) of Part II of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 – Misdirection resulted in sentence considered afresh –The trial court over-emphasised the seriousness of the offence and the interests of society – Under-emphasised the personal circumstances of the appellant – Sentence is shockingly harsh and inappropriate.

ORDER

1. The appeal against the sentence in respect of count 1 is upheld.
2. The sentence imposed by the trial court on 18 May 2025 is set aside and replaced with the following:

“The accused is sentenced to eighteen months’ imprisonment.”

3. The sentence is antedated to 18 May 2025.

JUDGMENT

Stanton J

Introduction:

- [1] The appellant was charged with two counts, namely:
- 1.1 Contravening the provisions of s 5(b), read with s 1, 13, 17 to 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 (“the Act”), read with the provisions of s 51(2) of the Criminal Law Amendment Act 105 of 1997 (“the Amendment Act”), alternatively of contravening the provisions of s 4(b), read with s 1, 13, 17 to 25 and 64 of the Act (“count 1”); and
 - 1.2 Contravening s 4(1)(b), read with s 1, 2, 4(2), 21, 24 to 26 and 35 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (“count 2”).
- [2] The appellant, who was legally represented at the trial, pleaded not guilty to the charges proffered against him, but did not provide a plea explanation. The State

accordingly bore the onus of proving all the elements of the two charges, beyond a reasonable doubt.

- [3] On 13 May 2025, the Magistrates' Court for the district of ZF Mgcawu, Upington, found the appellant guilty of: (a) Contravening the provisions of s 5(b), read with s 1, 13, 17 to 25 and 64 of the Act, read further with the provisions of s 51(2) of the Amendment Act (count 1); and (b) count 2.
- [4] According to the charge sheet, the minimum sentence provisions of the Amendment Act are applicable to count 1. In the trial court, the appellant's legal representative and the prosecutor confirmed that a 15-year minimum sentence should be imposed in terms of s 51(2) of the Amendment Act in respect of count 1, in the absence of substantial and compelling circumstances to justify a deviation therefrom.
- [5] On 18 May 2025, following the appellant's conviction, the trial court consequently applied s 51(2) to the conviction in respect of count 1 and sentenced the appellant, as a first offender, to 15 years' imprisonment.
- [6] The appellant petitioned this Court for leave to appeal his two convictions and the sentence imposed in count 1. With leave of this Court, he is before us on appeal against his sentence in respect of count 1 only.

Grounds of appeal:

- [7] The grounds upon which the appellant initially relied in his notice of appeal in respect of the sentence imposed were that the trial court erred in: (a) over-emphasising the seriousness of the offence and the interests of society; (b) under-emphasised his personal circumstances; (c) failing to find that substantial and compelling circumstances were present to justify a deviation; (d) not considering the mitigating factors as substantial and compelling; and (e) imposing a sentence that is shockingly harsh and inappropriate.

- [8] It is common cause that the Methcathinone in question weighed approximately one kilogram and was valued at between R300 and R400.
- [9] When the appeal was argued, Mr Biyela, on behalf of the appellant, with reference to *S v Ndaba*¹, submitted that the trial court incorrectly applied s 51(2) of the Amendment Act to the sentence in view of the value of the Methcathinone in question. He contended that, on this ground alone, the appeal should be upheld, and a lesser sentence should be imposed.
- [10] Section 51(2)(a)(i) of the Amendment Act stipulates that:
- ‘Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in Part II of Schedule 2, in the case of a first offender, to imprisonment for a period not less than 15 years’
- [11] Paragraphs (a) and (b) of Part II of Schedule 2 of the Amendment Act specify that the minimum sentence would be applicable to any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act if it is proved that the value of the dependence-producing substance in question is more than R50 000 or secondly, R10 000, if the evidence shows that a syndicate is involved.
- [12] Ms Pillay, on behalf of the State, conceded that the trial court incorrectly applied s 51(2) of the Amendment Act and that the appeal should succeed.

Applicable law:

- [13] It is necessary to reiterate the trite sentencing principle that punishment is pre-eminently a matter for the trial court’s discretion.² The circumstances in which a court of appeal may interfere in the sentencing discretion of a lower court are

¹ (R 5/25) [2025] ZANHC 92 (12 September 2025).

² See *S v Rabie* 1975 (4) SA 855 (A) at 857D – E; [1975] 4 All SA 723 (A) at 724.

circumscribed. The principles were restated in *S v Malgas*³ in the following terms:

'The mental process in which courts engage when considering questions of sentence depends upon the task at hand. Subject of course to any limitations imposed by legislation or binding judicial precedent, a trial court will consider the particular circumstances of the case in the light of the well-known triad of factors relevant to sentence and impose what it considers to be a just and appropriate sentence. A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate Court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate Court is at large. However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate Court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate". It must be emphasised that in the latter situation the appellate Court is not at large in the sense in which it is at large in the former. In the latter situation it may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may do so only where the difference is so substantial that it attracts epithets of the kind I have mentioned. No such limitation exists in the former situation.'

Evaluation:

- [14] Section 51(2) clearly does not apply in *casu* as the value of the drugs is far less than the amounts of R50 000 or R10 000 as specified in the Amendment Act.

³ 2001 (1) SACR 469 (SCA); 2001 (2) SA 1222 (SCA); [2001] 3 All SA 220 (A) para 12.

- [15] The learned trial magistrate therefore misapplied s 51(2) of the Amendment Act when she imposed the sentence of 15 years' imprisonment in respect of count 1. This irregularity and grave error has the resultant effect that the sentence of the trial court stands to be set aside.
- [16] In view of the trial court's material misdirection, this Court is thus entitled to consider the question of sentencing afresh.
- [17] In the trial court, the following facts were submitted as the appellant's personal and mitigating circumstances: (a) The appellant is a first offender; (b) He was 44 years old when he was convicted; (c) He has two wives and seven children; (d) He is a barber and the only breadwinner of his family; (e) He was awaiting trial for two years; (f) The quantity of the drugs (Methcathinone), was approximately only one kg; and (g) Being a first offender at 44 years, is indicative that the appellant can be rehabilitated.
- [18] The record reflects that the trial court considered the appellant's personal circumstances, but emphasised that it regarded the offence as very serious; and quoted *S v Bartlette*⁴, where the following was stated:

'The problem of drug-trafficking has haunted mankind for many years. With the passage of time, it has metamorphosed into a huge and intricate business enterprise which involves drug-lords, couriers, so-called runners and those who buy and use it. .

I strongly believe that it is no exaggeration to state that, with the effluxion of time, instead of abating the problem of dealings in drugs concomitant with drug abuse has become pandemic. It has developed into a serious malignant cancer which is fast eroding the social and moral fabric of our society. This is notwithstanding the tough stance taken by the Legislature, coupled with the severe sentences which our courts impose. There is hardly a day that passes without a report in the media of some people arrested for either dealing in drugs or using drugs or importing them into our country. In recent times our country has been seriously invaded by a variety of drugs which are

⁴ (CA&R 92/07) [2008] ZANHC 5 (15 February 2008) paras 9 and 10.

imported from some overseas countries. Quite paradoxically, our country has become a safe haven for drug-lords since the advent of democracy. We are caught in the big and intricate web of international drug-trafficking. What is even more frightening is how drugs have found their way into our schools which used to be regarded as safe citadels for our children. Our youth, students and even school children are at a serious risk of becoming drug addicts. In the quest for quick profit, the unscrupulous drug peddlers make no distinction. Nobody is spared from this scourge as drug-dealers spread their tentacles more wider. They sell their drugs to everybody including our youth, students and school children. In fact, because of their youthfulness, naivety, peer pressure and simple gullibility, our youth have become their easy target.’

- [19] The trial court fundamentally rested its decision on the 1975 judgment of *S v J*⁵ where the court, in deciding on the appropriate sentence, held that it should first and foremost consider the public interest.⁶ As this Court has already concluded, the trial court sentenced the appellant on an erroneous premise, which constituted a material misdirection that section 51(2) of the Amendment Act was applicable in the context of the present case. Consequently, the trial court found that no substantial or compelling circumstances existed to justify a deviation from the prescribed minimum sentence of 15 years’ imprisonment.
- [20] There is no doubt that the trial court failed to reasonably balance the four objectives of punishment (deterrence, prevention, rehabilitation and retribution) against the triad of factors as set out in *S v Zinn*.⁷ These factors are: (a) the personal circumstances of the offender, including his character, conduct in life and personality, and everything that influenced the commission of the offence; (b) the nature and seriousness of the offence committed; and (c) the interests of the community, including the necessity for a level of uniformity in sentencing.⁸ Punishment must indeed fit the criminal, as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances.⁹

⁵ 1975 (3) SA 146 (O).

⁶ *Ibid* at 155E-H.

⁷ 1969 (2) SA 537 A at 540G; see also *S v Khumalo and Others* [1984] 2 All SA 232 (A) at 234.

⁸ *S v Bodibe* [2021] JOL 51537 (GP) para 2.

⁹ *S v Rabie* 1975 (4) SA 855 (A) at 862G; [1975] 4 All SA 723 (A) at 729.

- [21] In the context of the present case, the sentence imposed by the trial court can properly be described as “shocking”, “startling” or “disturbingly inappropriate”.
- [22] What remains is what a just and appropriate sentence would be in the circumstances. It is trite that each case has to be decided on its own facts, and sentences imposed in similar cases do not bind the sentencer’s discretion but rather provide guidelines for sentencing.¹⁰ In *S v D*,¹¹ it was aptly stated that “decided cases on sentence provide guidelines, not straitjackets”. In *S v PB*¹², the Supreme Court of Appeal cautioned against a slavish following of decided cases on sentences, which could result in an abdication by the court of ‘its duty and discretion to consider sentence untrammelled by sentences imposed by another court, albeit in a similar case’. It is, however, equally important that sentences imposed in similar cases must be seen to be consistent.¹³ Regard being had to these principles, it is therefore apposite to consider sentences imposed in comparable cases.¹⁴
- [23] In *S v Collins*¹⁵, a 37-year-old appellant was convicted of dealing in one Mandrax tablet in contravention of s 2(a) of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971. He was sentenced to four years’ imprisonment, of which two years were conditionally suspended for five years. On appeal, the sentence was altered to two years’ imprisonment wholly suspended for five years on appropriate conditions.
- [24] In *S v Harding*¹⁶, the accused was convicted on three counts of contravening s 5(b) of the Act as he had sold 112 LSD tablets through police traps on three separate occasions. On appeal, the sentence of eight years imprisonment was

¹⁰ See *S v Sinden* 1995 (2) SACR 704 (A) at 708A-B.

¹¹ 1995 (1) SACR 259 (A) at 260E.

¹² 2013 (2) SACR 533 (SCA) para 16.

¹³ *S v McMillan* 2003 (1) SACR 27 (SCA) para 10.

¹⁴ See *S v Tiry and Others* 2021 (1) SACR 349 (SCA) para 120.

¹⁵ 1990 (1) SACR 577 (A).

¹⁶ 1996 (1) SACR 503 (C).

set aside and substituted with a sentence of three years of correctional supervision in terms of s 276(1)(h) of the Criminal Procedure Act.¹⁷

- [25] In *S v Markus*¹⁸, a 42-year-old accused and a first offender, was convicted of possession of six Mandrax tablets. Because he had already spent five months in prison awaiting trial, and earned R350 per week with four minor children to support, the appeal court found the sentence of R2000 or 18 months' imprisonment to be harsh. The appeal court set aside the sentence and substituted it with a fine of R500 or four months' imprisonment.
- [26] In a recent unreported judgment of this Division in *May v S*¹⁹, the Court found that the trial court erred in imposing a five-year imprisonment on the appellant, who had pleaded guilty to possession or use of 5 Mandrax tablets and 13 quarter Mandrax tablets containing methaqualone in contravention of s 4(b) of the Act (*Drugs and Drug Trafficking Act 140 of 1992*). The sentence imposed by the trial court on 26 September 2024 was set aside, and replaced with a sentence of two years' imprisonment, of which one year is suspended for three years on condition that the accused is not found guilty of contravening s 4(a) or 4(b) of the Act during the period of suspension.

Conclusion:

- [27] The sentence imposed by the trial court *in casu* is out of kilter with those imposed in comparable cases, as well as the sentence this Court would impose under the circumstances. As a consequence, this Court is entitled to interfere and alter the sentence.
- [28] The appellant was sentenced on 18 May 2025 and has served almost eight months of his sentence.

¹⁷ 51 of 1977.

¹⁸ 1997 (2) SACR 538 (C).


¹⁹ (CA & R 19/2025) [2025] ZANHC 101 (19 September 2025).

[29] In the result, the following order is made:

1. The appeal against the sentence in respect of count 1 is upheld.
2. The sentence imposed by the trial court on 18 May 2025 is set aside and replaced with the following:

“The accused is sentenced to eighteen months’ imprisonment”

3. The sentence is antedated to 18 May 2025.


STANTON J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

I concur.


TYUTHUZA AJ
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the appellant:

Mr K Biyela

Instructed by:

Legal-Aid South Africa

For the Respondent:

Ms L Pillay

Instructed by:

The Director of Public Prosecutions