

SOUTH AFRICA / JUDGMENT

Makambilwa and Another v S (A1046/2006) [2009] ZAGPPHC 388 (23 September 2009) [2009] ZAGPPHC 388

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhafola, Mabuse

CASE / FILE NUMBER

A1046/2006

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

GAUTENG DIVISION. PRETORIA

CASE

NUMBER: A1046/2006

DATE:

21/09/2009

TOMBO

MAKAMBILWA

1st

APPELLANT

M

HADIZ

2nd

APPELLANT

V

THE

STATE

RESPONDENT

Review

Judgment:

Makhafola

J

Mabuse

AJ

JUDGMENT

MAKHAFOLA J:

INTRODUCTION:

1. The 1st Appellant stood trial in the Piet Rerief Regional Court as Accused 2 and he was represented by counsel. He faced two counts namely counts 5 and 7 relating to dealing in MDMA tablets also known as “ecstasy” and 0.19 gram cocaine also known as “halfmoon rock cocaine.” He pleaded guilty and he was found guilty as charged. He was sentenced to 8 years imprisonment.
2. The 2nd appellant who stood trial in the same court was accused 3. He pleaded guilty to counts 1 and 8 relating to dealing with “ecstasy”

tablets and “halfmoon cocaine” respectively. He was found guilty as charged and he was sentenced to 15 years imprisonment.

3. They are now appealing against the sentences imposed on them on 8 August 2006.
4. The sentencing powers are within the judicial discretion of the court that tries the accused.

Vide: R

V Mapulo and Others 1920 AD 56 at 57

S V RUNDS 1978 (4) SA 304 (A)

S V ISAAK 1957 (2) SA 385 (O) at 386

5. Once there is no misdirection committed by the sentencing court, the appeal court will not interfere in that sentence.
6. The sentences imposed on the appellants are not shocking at all, and I find no good ground that this court should set them aside.
7. The sentences imposed on the appellants are not inappropriate or shocking to say the least. The trial court was actually lenient by taking the counts together for the purposes of sentencing even where the offences were remote in time because they had been committed on different dates.
8. The Zinn triad was duly considered by the court a quo during sentencing. I find no misdirection in the manner the court had assessed and evaluated the facts during the sentencing stage.

Vide: S

V ZINN 1969 (2) SA 537 (A).

9. I further find nothing on record to suggest that the court did not exercise its judicial discretion which is bound by judicial precedent and authority.

Vide: S V JUTA 1988 (4) SA 962 (TK) at 927 D-F.

10. I find that the sentences are proportionate to the serious offences for which the appellants had been convicted. The sentences are deterrent in essence which is a crucial aspect of sentencing. The main purposes of punishment are to deter, prevent, reform and retribute the offender and the would-be offenders. The sentences imposed serve that purpose.

Vide: S V RABIE 1975 (4) SA 855 (A).

11. This court is not competent to interfere with correct findings of a lower court. In the circumstances, I am of the view that the appeals are without merit and should be dismissed.

I give the following order:

- (a) The sentences imposed by the court a quo are confirmed.
(b) The appeals of both appellants are dismissed.

K. MAKHAFOLA

JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

P.M. MABUSE

ACTING JUDGE OF THE HIGH COURT

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