

SOUTH AFRICA / JUDGMENT

Ngema v S (A560/2016) [2017] ZAGPPHC 579 (12 September 2017)

[2017] ZAGPPHC 579

COURT

North Gauteng High Court, Pretoria

BEFORE

SP Mothle, A Millar

CASE / FILE NUMBER

A560/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NUMBER: A560/2016

DATE:

12/09/2017

In

the matter between:

SIYABONGA

FREEDOM

NGEMA Appellant

And

THE

STATE Respondent

JUDGMENT

MOTHLE J (Millar AJ concurring)

1. This is an appeal against a sentence of 8 years imprisonment imposed on the Appellant by the Regional Court Magistrate, Piet Retief on 16 November 2015.
2. The Appellant, a 39-year old male was convicted on a charge of contravening Section 5 (b) read with Sections 1, 13, 17 to 25 and 64 of the Drugs and Drug Trafficking Act, 140 of 1992 read with the provisions of Section 51(2) of the Criminal Law Amendment Act, 105 of

1997. The offence is generally known as dealing in an undesirable dependence producing substance. In this case, Appellant pleaded guilty to dealing in 121kg of dagga to the value of R169, 000.00.

3. In terms of Section 51(2) of the Criminal Law Amendment Act, 105 of 1997, a minimum sentence of 15 years imprisonment for a first offender is prescribed for this offence, unless substantial and compelling circumstances are found to be present. In this regard, the schedule describing the offences provides thus:

" Any offence referred to in Section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), if it is proved that-

- (a) The value of the dependence producing substance in question is more than R50,000.00;
- (b) The value of the dependence producing substance in question is more than R10,000.00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution

or furtherance of a common purpose or conspiracy; or

- (c) The offence was committed by any law enforcement officer."

4. The Court in considering sentence opted to deviate from the minimum and imposed a sentence of 8 years imprisonment. It is clear from the evidence that the value of the dagga being R169 000, which Appellant was dealing with, is three times the minimum amount stipulated in terms of the Act, namely R50,000.00. However, the Magistrate took into account the personal circumstances of Appellant and deviated from the prescribed minimum sentence.

5. It is common cause that in sentencing the Appellant, the Magistrate erred in holding that Appellant dealt in 150 kg of dagga. This error is immaterial as the Act refers to the minimum rand value and not to the weight of the dagga.

6. It is trite law that in an appeal against sentence, a court of appeal should be guided by the principle that punishment is pre- eminently a matter for the discretion of the trial court and that an Appeal Court should be careful not to erode that discretion. The Appeal Court may only intervene in a sentence imposed by the trial court if:

6.1 An irregularity took place during the trial or sentencing stage; or

6.2 The trial court misdirected itself in respect of the imposition of sentence; or

6.3 The sentence imposed by the Court a quo could be described as disproportionate to the offence; disturbingly or shockingly inappropriate.

See in this regard S v De Jager and Another 1965 (2) SA 616 (A) and S v Rabie 1975 (4) SA 855 (A).
This Appeal

Court finds that none of the three conditions stated above exist and as such it cannot intervene in the sentence.

7. Dealing in an undesirable substance is a serious offence in that the dealer, by distributing such substance, affects a wider community as opposed to just being in possession thereof. This factor is one of the reasons for this offence to have a prescribed minimum sentence. The value of the dagga in this case was three times the limit. This factor alone is aggravating. However, the trial court took into account Appellant's mitigating factors and effected a substantial reduction of sentence when it deviated from the prescribed minimum sentence of 15 years imprisonment. It is therefore my view that the appeal should fail.

7. In the premises I make the following order:

The appeal against the sentence of 8 years imprisonment imposed by the Regional Magistrate on the Appellant is hereby dismissed.

SP MOTHLE

Judge of the High Court,

Gauteng Division, Pretoria.

I agree:

A MILLAR

Acting Judge of the High Court,

Gauteng Division , Pretoria.

For the Appellant: Adv. Mommburu

Instructed by: Nonzwakazi Radebe Attorneys

C/O Mafuyeka & Associates

Sunnyside, Pretoria.

For the State: Adv. Scheepers

Instructed by: Director of Public Prosecutions, Pretoria.

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