

SOUTH AFRICA / JUDGMENT

S v Brand and Another (155/2011) [2011] ZAFSHC 76 (19 May 2011)

[2011] ZAFSHC 76

COURT

Free State High Court, Bloemfontein

BEFORE

A.F. Jordaan, C.H.G. van der Merwe

CASE / FILE NUMBER

155/2011

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FREE STATE HIGH
COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH
AFRICA

Review No. : 155/2011

In

the review between:-

THE

STATE

versus

ANGELO EDWIN BRAND

.....Accused

Number 1

YOLANDA MAARMAN

.....Accused

Number 2

CORAM:

VAN DER MERWE, J et JORDAAN, J

JUDGMENT

BY: JORDAAN, J

DELIVERED ON: 19 MAY 2011

[1] This matter was sent for a special review in terms of section 304(4) of the Criminal Procedure Act, No. 51 of 1977, by the magistrate of Boshof.

[2] The two accused were charged with two counts, namely
count 1 – contravention of section 5(b) of Act 140 of 1992 (dealing in dagga); and
count 2 – contravention of section 4(b) of Act 140 of 1992 (possession of dagga).

From the record it appears that both charges emanated from exactly the same set of facts but, instead of charging the accused on the two aforesaid different charges in the alternative, both charges were dealt with as if separate counts.

[3] Both accused (who were represented by a legal representative) pleaded guilty to both the charges and both made statements in terms of section 112(2) of the Criminal Procedure Act wherein they admitted that they were guilty of both charges and in which all the material elements of dealing in dagga were admitted.

[4] The presiding magistrate convicted both accused on both charges and, taking the convictions together for purposes of sentence, sentenced each accused to a fine of R800,00 or imprisonment for a period of six (6) months, wholly suspended for a period of five

(5) years on condition that the accused are not convicted of possession or dealing in dagga committed during the period of suspension.

[5] After the matter was finalised the learned presiding magistrate realised that the convictions on both charges were irregular and submitted the matter for special review as aforesaid. The learned magistrate reports as follows:

“2. After the matter was finalised I revisited my decision and doubted its correctness on the following basis:

2.1 Counts 1 and 2 arise from the same criminal episode and both accused ought to have been charged in the main or alternative and not on two separate charges. Counts 1 and 2 boils down to splitting of charges.

2.2 My decision to convict on both counts is incorrect as it amounts to a duplication of convictions.

3. On the basis of the aforementioned I humbly request the Honourable Judge to make the following orders:

- (a) Confirm the convictions for both accused in respect of count no. 1.
- (b) Set aside the convictions on count no. 2.
- (c) Confirm the imposed sentence and the subsequent orders or,
- (d) Make any order necessary on (sic) the circumstances.”
- [6] As far as the convictions are concerned, the learned magistrate is clearly correct. The convictions on count 1, dealing in dagga, appears to be in accordance with law and justified in the circumstances and should be confirmed. However, the convictions on count 2, possession of dagga, clearly constitute a splitting of charges and are irregular. It should be set aside.
- [7] In view of the fact that the accused have both been convicted on a charge of dealing in dagga, the sentences imposed are clearly not competent. Firstly, the imposition of a fine with alternative imprisonment without a further term of imprisonment, whether suspended or not, is not competent. See *S v MOSOLOTSANE* 1993 (1) SACR 502 (O) and *S v MOHOME* 1993 (1) SACR 504 (T). Secondly, a suspended sentence imposed after a conviction of dealing in dagga and containing a condition that the accused is not convicted of, inter alia, possession of dagga, is frowned upon in this division and should not form part of the conditions of suspension. See *S v MOKOENA* 1986 (2) SA 106 (O) at 107 F – 108 A, *S v NXUMALO* 1992 (2) SACR 268 (O) at 273 h – 274 b and *S v MONISA* 1992 (2) SACR 671 (O).
- [8] The sentences can therefore not be confirmed as requested by the learned magistrate.
- [9] In the result the following orders are made:
1. The convictions of both accused in respect of count 1 are confirmed.
 2. The convictions of both accused on count 2 are set aside.
 3. The sentences imposed on both accused are set aside and the matter is remitted to the trial court for purposes of sentencing the accused afresh.

A.F. JORDAAN, J

I concur.

C.H.G. VAN DER MERWE, J

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