

SOUTH AFRICA / JUDGMENT

S v Dikgoro (C44/2023) [2023] ZAGPPHC 650 (1 August 2023)

[2023] ZAGPPHC 650

COURT

North Gauteng High Court, Pretoria

BEFORE

Neukircher

CASE / FILE NUMBER

C44/2023

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

REVIEW CASE NO C44/2023

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: YES

DATE: 1 AUGUST 2023

THE STATE Applicant And KOKETSO DIKGORO Accused

NEUKIRCHER J:

1] This matter comes before me by way of review at the request of the Acting Senior Magistrate, Pretoria North. The reason for the request appears from the letter accompanying the transcript and that reads as follows:

"The accused person appeared before then acting magistrate Mabe whose contract expired and was never renewed, when I attended to quality assurance, I discovered that an incomplete worded sentence was imposed, fortunately according to our records the Accused person paid the fine immediately on the day when the sentence was imposed, the reason for the referral of the matter is for the High Court to review the incomplete sentence and direction." (sic)

2] It is unnecessary to go into too much detail regarding the facts of this matter. Suffice it to say that the accused was charged with possession of cocaine in terms of the provisions of s 5(a) the Drugs and Drug Trafficking Act 140 of 1992 (the Act).[1] He was represented at trial and he plead guilty. As the State did not prove that the possession fell under the provisions of s 51(2) of the

Criminal Law Amendment Act 105 of 1997, and thus did not prove that the sentence required a minimum sentence, the provisions of s17(c) of the Act apply which provides that a person convicted of the above offence shall be liable "in the case of an offence referred to in section 13(e), to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment".

3] In the present matter the Magistrate sentenced the accused to the payment of a fine of R2 000, payable immediately. She was of the view that, having regard to all the relevant circumstances, this was an appropriate sentence. I cannot fault this finding. The accused was also not declared unfit to possess a firearm because his future employment hinged upon his being able to carry one.[2]

4] The J4 form records the sentence reads as follows:

"Fined R2000 (TWO THOUSAND RAND)

5] The accused has already paid the fine in full.

6] Insofar as the Senior Acting Magistrate is of the view that the sentence is incomplete, and simply for record purposes, the sentence is set aside and replaced with the following:

"1. The accused is found guilty of contravening the provisions of s 5(a) of the Drugs and Drug Trafficking Act no 140 of 1992.

2. The accused is sentenced to the payment of a fine only in the amount of R2 000-00, which fine is payable immediately.

3. The accused is not declared unfit to possess a firearm."

B NEUKIRCHER

JUDGE OF THE HIGH COURT

1 August 2023

[1] S 5(a), as read with s 13(e) of the Act provide that it is an offence for anyone to use or be in possession of a dependence producing substance - there are exceptions to this, but the present circumstances do not fall within those exceptions

[2] His prospective employment being that of a security guard

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