

SOUTH AFRICA / JUDGMENT

# S v Dlamini (R42/2020) [2020] ZAFSHC 109 (18 June 2020)

**[2020] ZAFSHC 109****COURT**

Free State High Court, Bloemfontein

**BEFORE**

O.R. Majosi, P.E. Molitsoane

**CASE / FILE NUMBER**

R42/2020

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**Source record****IN THE HIGH COURT****OF SOUTH AFRICA,****FREE****STATE DIVISION, BLOEMFONTEIN****Review****no: R 42/2020****Magistrate****court no: A 394/19****In****the matter between:**THE  
STATE  
and  
SIBUSISO DLAMINI**CORAM:**

MOLITSOANE, J et, MAJOSI, AJ

**JUDGMENT****BY: MAJOSI, AJ****DELIVERED ON: 18 JUNE 2020**

- [1] The matter now serves before us as a Special Review in terms of Section 304(4) of the Criminal Procedure Act, 51 of 1977 (the CPA). The accused was charged with contravening Section 5(b) of the Drug and Drug Trafficking Act, 140 of 1992 with the alternative thereto being contravening Section 4(b) of the same Act and was subsequently convicted on the main count of dealing in drugs.

- [2] The accused was sentenced to a fine of R 10 000.00 or 12 months imprisonment which was wholly suspended for 5 years on condition that the accused is not convicted of contravening s5(b) or 4(a) of Act 140 of 1992 within the period of suspension. In terms of S103 (1) of the Firearms Control Act, 60 of 2000 it was ordered that the accused is unfit to possess a firearm. The dagga was also forfeited to the state.
- [3] The matter was referred to a Review Judge in chambers without any letter/memo accompanying it save for the J4 which referred to S 302(1) of the CPA. I caused a query to be sent to the Magistrate dated 6 May 2020 which read as follows:
- “1. It appears from the J15 that the matter was concluded on the 30 July 2019. Kindly provide an explanation as to the delay as to why the J4 was only signed on the 23 March 2020 and not accompanied by any letter indicating on which basis and purpose the Review is sought.*
2. The J4 refers to Section 302(1) of Act 51 of 1977. Clarify if this specific section finds application here in light of the fact that the accused was legally represented throughout the trial.
3. The accused was convicted of dealing in dagga. Clarify further how this conviction sustained as page 1 of the judgment refers to the date of the 7 August 2019 whereas the Annexures to J15 and the evidence adduced refer to 7 March 2019.
4. The accused was convicted on the main count of Dealing in dagga (contravening Section 5(b) of the Drug and Drug Trafficking Act 140 of 1992). On what basis was the sentence imposed taking into consideration the provisions of Sections 13(f) and 17(e) of Act 140 of 1992? ”
- [4] The Presiding Officer replied to the query on the 29 May 2020 expressing her regret and indicated that there was in fact an initial letter accompanying the review as penned by the Head of Court but same became detached when the clerk of court compiled the review and later dispatched the review to the High Court. The administrative oversight was indeed confirmed in a separate letter emanating from a court clerk.
- [5] I deem this explanation amendable in light of the Head of Court’s letter dated the 17 March 2020 which indicated that the incompetent sentence was noticed during a quality assurance check on charge – sheets and requested that the Review Judge confirm the conviction and act in accordance with S v Ramone 2013 (2) SACR 596 FS or to set aside the sentence and remit the matter to the trial court for reconsideration of sentence.
- [6] The Magistrate conceded as per the query that this is indeed a special review in terms of s304 (4) of the CPA in light of the incompetent sentence imposed stemming from the erroneous application of Section 17(e) of Act 140 of 1992 ,though no explanation was forthcoming why S 302(1) of the CPA was initially referred to in a signed J4. She also further explained that she had a slip of the tongue pertaining to the date of the incident as it was meant to be the 7th of July 2019. I will return to this inapt submission later.

[7] Section 13(f) read with the provisions of s17(e) deal with the penalty provisions for contravention of s5(b) of Act 140 of 1992. The

penalty provided is imprisonment for a period not exceeding 25 years, or to both such imprisonment and such fine as the court may deem fit to impose. In my view, the Magistrate ought to have imposed direct imprisonment though it may have been suspended and not imposed a fine as an alternative to imprisonment as envisioned in *S v Ramone supra*.

[8] The sentence imposed by the Magistrate must thus be corrected and replaced with a sentence in line with the penalty clause (section 17) of Act 140 of 1992. The accused was a 43 year old first offender, with a wife and two minor children and generated an income from selling clothing and his highest level of education was provided as Grade 4. It is not clear from the record what the accused income was per day, per week or per month or why the Magistrate thought it appropriate to impose a fine in the absence of such information. It is evident from the previous sentence imposed, that the Magistrate's intention was to suspend any fine or imprisonment for that matter, for the benefit of the accused.

[9] The dagga weighed in at just over 2 kilograms and this ought to have been considered for sentence together with the accused personal circumstances. In my view, having considered the principles of sentencing for dealing in drugs as discussed in *S v Legoa 2003*

(1) SACR 13 (SCA) and *S v Mbhamali 2013 JDR 2150 (GNP)*, I deem 12 months direct imprisonment which is wholly suspended with certain conditions appropriate. The accused will not suffer any prejudice as the sentence in my view, is in the interest of justice having regard to the circumstances alluded to above.

[10] The date of the offence is, as per the amended annexure to the charge-sheet, the 7th of March 2019. Evidence adduced by the state and the accused admissions in terms of s220 of the CPA reflects same hence my query to the Magistrate. The inapt submission that the date was meant to be the 7th of July 2019 further demonstrates her imprudent approach to detail. Fortunately, the transcribed record is clear in that regard and the accused will suffer no prejudice as the date of the incident was never placed in dispute. In light thereof, the proverbial slip of the tongue will be seen as an oversight that ought not to be repeated.

[10] Accordingly, I make the following order:

1. The conviction is confirmed
2. The sentence is set aside and replaced with the following:

Accused is sentenced to 12 months imprisonment which is wholly suspended for a period of 5 years on condition the accused is not convicted of contravention of S 5(b) or S4(b) of Act, 140 of 1992 committed during the period of suspension.

3. In terms of s25 of Act 140 of 1992, the drugs are forfeited to the state.
4. The accused is unfit to possess a firearm in terms of section 103(1) of Act 60 of 2000

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O.R. MAJOSI, AJ

I concur

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P.E MOLITSOANE,J

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Prepared on 9 October 2026 · Esheria