

SOUTH AFRICA / JUDGMENT

S v Melato (126/2012) [2012] ZAFSHC 162 (24 August 2012) [2012] ZAFSHC 162

COURT

Free State High Court, Bloemfontein

BEFORE

D.S. Molefe, B.C. Mocumie

CASE / FILE NUMBER

126/2012

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FREE

STATE HIGH COURT. BLOEMFONTEIN REPUBLIC OF SOUTH AFRICA

Review No. :

126/2012

In the review

between: THE

STATE

versus

RAYMOND

MOTSAMAI MELATO

CORAM:

MOCUMIE,
J et
MOLEFE,
AJ

DELIVERED:

24
AUGUST 2012

JUDGMENT

BY: MOLEFE, AJ

REVIEW

JUDGMENT

[1] On the 22nd February 2012, the accused person, Mr Raymond Motsamai Melato, residing at 1733 Mamafube, Petrus Steyn, was found guilty of contravening the provisions of section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 ("the Drug Trafficking Act"), dealing in dagga weighing 466.3 grams, by the Magistrate Court, Lindley. He was sentenced to eighteen months imprisonment.

[2] The accused subsequently applied for leave to appeal against the sentence. The trial court denied him leave to appeal on the basis that when sentenced, the court took into consideration his previous convictions of 2005 and 2010, the seriousness of the offence and the weight of the dagga. The trial court was also of the opinion that no other court would impose a different sentence and thus come to a different conclusion as he did.

[3] Some time after leave to appeal was dismissed, the case was remitted to this Court in terms of section 302 of the Criminal Procedure Act 51 of 1977 ("the CPA"). The automatic review served before Molemela, J. In her letter dated 08 June 2012, she raised the following query:

"Have the provisions applicable to automatic review not ceased to apply, given the fact that the accused unsuccessfully applied for leave to appeal?

(see section 302 (1)(b)(iii) of the Criminal Procedure Act 51 of 1977)"

[4] The presiding officer has since responded as follows:

"Artikel 302(1)(b) van die Strafproseswet 51/1977 lees soos volg 'Die bepalings van paragraaf (a)-(iii) hou op om ten opsigte van 'n beskuldigde van toepassing te wees wanneer uitspraak in die appel gelever word.'

Ek was van oordeel dat dit beteken het dat daar 'n uitspraak in die Hooggeregshof moes wees.

Die enigste literatuur wat ek in die verband kon vind is Hiemstra's Criminal Procedure Commentary op p. 30-17 'Qualifications- The above prescriptions are subject to the following qualifications:

1

2

3 A case which is on appeal is not reviewable, but becomes reviewable if the appeal is withdrawn. As soon as judgement is given in the appeal, the case is no longer reviewable (subsection (1)(b))'.

Dit blyk dus dat my interpretasie van die artikel verkeerd was. Die appel is nie teruggetrek nie. Die uitspraak wat ek gelever het toe ek die aansoek om verlof om te appelleer geweier het is sekerlik ook 'n uitspraak soos bedoel in artikel 302(1)(b) Wet 51/1977."

[5] Section 302(3)(a) of the CPA states that an automatic review only takes place in respect of 'a sentence which is imposed in respect of an accused who was not assisted by a legal adviser*. Although it is called 'review', it is actually more in the nature of an automatic appeal without

argument. The powers of the reviewing judge (determined in section 304) are not limited to irregularities only. Any point which could have been raised on appeal may also receive attention. (See Du Toit et al: Commentary on the Criminal Procedure Act; Kriegler et Kruger; Hiemstra, Suid-Afrikaanse Strafproses, (2002) 799.)

[6] Section 302(1) (a) states that any sentence imposed by a Magistrate's Court, shall be subject to the ordinary course to review by a Judge of the

provincial or local division having jurisdiction. Section 302(1) (b) (iii) provides that the provisions of paragraph (a) shall cease to apply in respect of an accused when judgment in the appeal is given.

[7] In this case, in my view, the trial court made a 'judgment in the appeal' as contemplated in s302 (1)

(b) by refusing the accused leave to appeal. Therefore, the automatic review ceased to apply herein. The provisions of section 302(1) (b)(iii) are clear. This is but an oversight by the presiding officer, which he correctly conceded in his reply.

[8] In terms of the CPA the accused could have petitioned the Judge President of this Division if he so wished and was advised to do so in the event that he was not satisfied with the decision of the trial court in the first instance and when it refused to grant him leave to appeal.

[9] Having come to the conclusion I have come to in the above paragraphs, in terms of s302 read with 304 of the CPA since the accused was not legally represented during his trial, it is also necessary to consider whether the proceedings then are in accordance with justice.

[10] As indicated already the accused pleaded guilty on contravention of s5

(b) of the Drug Trafficking Act. Based on his answers in terms of s112 of the CPA he was convicted as charged and sentenced to eighteen months imprisonment. I am satisfied that the conviction is in order. In respect of sentence, it is clear that the presiding officer correctly applied his mind in coming to a just sentence taking into account the personal circumstances of the accused, the seriousness of the offence and the interest of society. What was clearly aggravating in his case was the fact that he had two previous convictions and had been given an option of a fine and a suspended sentence on those two occasions which sentences did not deter him from continuing to commit the same offences unabated. I am satisfied that the proceedings are in accordance with justice.

[10] In the circumstances the following order is made

"The conviction and sentence of the trial court as on 22nd February 2012, are confirmed."

D.S. MOLEFE, AJ

I agree.

B.C. MOCUMIE, J

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