

SOUTH AFRICA / JUDGMENT

S v Mokheea (1075/2004) [2004] ZAFSHC 92 (7 October 2004) [2004] ZAFSHC 92

COURT

Free State High Court, Bloemfontein

BEFORE

Van der Merwe

CASE / FILE NUMBER

1075/2004

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IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No.: 1075/2004

In the review of:

THE STATE

versus

TEBOGO MOKHEEA

CORAM: VAN DER MERWE J

JUDGMENT: VAN DER MERWE J

DELIVERED ON: 7 OCTOBER 2004

- [1] In consequence of his plea of guilty, the accused in this matter was convicted of a contravention of section 4(b) of Act No 140 of 1992, in that he was in the possession of 7,6 kilogram cannabis. On 25 May 2004 he was sentenced to a fine of R3 000,00 or six months imprisonment and a further 12 months imprisonment wholly suspended for a period of five years on condition that the accused is not convicted of contravening sections 4(b) or 5(b) of Act No 140 of 1992 committed during the period of suspension.
- [2] The record of proceedings in the magistrate court, consisting of six typed pages, reached the office of the Registrar of this Court on 8 July 2004. Per letter dated 9 July 2004 the magistrate was requested to furnish reasons for the sentence. Such reasons, although dated 29 July 2004, reached the office of the Registrar only on 29 September 2004, without any

explanation. I sincerely hope that the person or persons responsible will keep in mind in future that the liberty of citizens are at stake in these matters and that such delays will not be repeated.

- [3] The accused is 22 years of age. He is unmarried but the father of a child of three years old. He passed grade 12 in the year 2002 but was unable to obtain a permanent job. He did odd jobs for approximately R25,00 per day. He was supposed to attend an interview for a job at Ellerines Furniture on 8 June 2004. From the above it appears that the accused has the potential to make a useful contribution to society. The magistrate did not inquire from the accused as to the purpose of his possession of the cannabis. Accordingly it must be accepted for the purpose of sentence that he possessed it for personal use. The accused is a first offender.
- [4] In these circumstances the sentence imposed is in my view startlingly inappropriate. Also, the magistrate seriously misdirected himself by sentencing the accused on the basis that the accused was in possession of the dagga for purposes of transporting it to be used for a purpose other than personal use. The sentence must therefore in my judgment be set aside. In all the circumstances a sentence of a fine of R750,00 or three months imprisonment is in my view appropriate.
- [5] The conviction is confirmed but the sentence is accordingly set aside and substituted with a sentence of a fine of R750,00 or three months imprisonment, which must be deemed to have been imposed on 25 May 2004.

C.H.G. VAN DER MERWE. J

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