

SOUTH AFRICA / JUDGMENT

Skapu v S (CA&R69/2012) [2016] ZAECHGHC 15 (24 March 2016)

[2016] ZAECHGHC 15

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Beshe, Roberson

CASE / FILE NUMBER

CA&R69/2012

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE

NO.: CA&R69/2012

DATE:

24 MARCH 2016

In

the matter between:

JACKSON

SKAPU.....Appellant

And

THE

STATE.....Respo

ndent

JUDGMENT

BESHE J:

- [1] The appellant was arraigned before the Magistrate Dordrecht on a charge of contravening Section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 (the Act) – Dealing in drugs, it being alleged that he dealt in a large quantity of dagga. In the alternative, he was charged with possession or use of the drugs in contravention of Section 4(b) read with 1, 13, 17 to 25 and 64 of the Act.

- [2] He pleaded not guilty to both charges. He was however convicted on the main count at the conclusion of the trial. He was sentenced to five (5) years imprisonment. He is now appealing against the sentence with leave to do so having been granted by the court a quo.
- [3] The sentence that was imposed in the court a quo is assailed on the ground that it is so excessive as to induce a sense of shock. It was submitted inter alia, that only two of appellant's previous convictions are relevant to the offence charged. It was further submitted that the state did not place evidence to prove the amount of dagga involved in this matter – and that the appellant was convicted on the basis of having been in possession of “a large quantity of dagga”.
- [4] From the evidence presented during the trial, it transpired that the appellant was found in possession of five (5) bags of dagga. When these were exhibited in court, they were observed by the magistrate to be “five
- (5) maize meal, mealie meal or special maize meal sacks, it also reflects 80kg, but it contains – it is full of green plantation substance”. [1] There is no doubt that the appellant was in possession of a large quantity of dagga. The magistrate did not misdirect herself in this regard.
- [5] A further ground relied upon for submitting that the sentence imposed by the court a quo was severe and induces a sense of shock, is that the magistrate did not accord due weight to correctional supervision as a sentencing

option. It was submitted on behalf of the appellant that the suitability of correctional supervision as a sentence option was not

addressed by the magistrate. It being submitted that all that the magistrate said in regard to correctional supervision is that it was not a suitable sentencing option in view of the fact that the appellant has three (3) previous convictions, two (2) of which are for dealing in drugs.

- [6] The two (2) drug related previous convictions, according to the record of previous convictions (SAP 69) are:

On the 11 March 2004 he was convicted possession / use / dealing / cultivation of prohibited dependence producing drug or plant. He was sentenced to pay a fine of five thousand rands or three (3) years imprisonment of which one thousand rands or two (2) years

imprisonment was suspended for five (5) years on condition that he is not convicted of Section 5 (b) during the period of suspension. Section 5 (b) of the Drugs and Drug Trafficking Act 140 of 1992 prohibits the dealing in any dangerous dependence producing substance or any undesirable dependence producing substance.

- [7] On the 22 April 2008, the appellant was convicted of contravening Section 5 (b) of the abovementioned Act. In this instance he was sentenced to pay a fine of R2000.00 or to undergo imprisonment for six (6) months with half of this sentence suspended for five (5) years conditionally.
- [8] The offence which is the subject of this appeal was committed on the 1 September 2008 some five months after the conviction and sentence mentioned in paragraph [7] supra.
- [9] It was submitted on behalf of the appellant that the magistrate committed a misdirection by sentencing the appellant on the basis that he has two (2) previous convictions for dealing in drugs. It was argued in this regard that the 2004 conviction is vague in that it refers to use / dealing / possession and cultivating dependence producing drug. It may be so that the 2004 conviction is couched as such in the SAP69 form. But it must however be borne in mind that the condition of suspension in respect of this conviction refers to dealing in a dependence producing drug. In addition the appellant admitted that in 2008 he was convicted of dealing in drugs.[2] I am therefore not persuaded that the magistrate misdirected herself in regard to the nature of appellant's previous convictions.
- [10] Regarding correctional supervision as a sentencing option, it is trite that it is a sentencing option for any offence, including

serious offences.[3]

- [11] A report by a Correctional official Mr Ramncwana as to the suitability or otherwise of a correctional supervision sentence was placed before the court a quo. Mr Ramncwana also gave viva voce evidence. In his report Mr Ramncwana stated that correctional supervision was not an appropriate sentence – that it was not recommended and gave the following reasons for this recommendation:

- The appellant has been found guilty of a very serious offence.
- He was caught several times previously for dealing in dagga.
- He seems not to acknowledge his wrongdoing.
- He has many previous convictions and the majority of them involve dagga.

Earlier in the report he makes mention of “twenty previous convictions of which some are related to dagga”. When giving evidence in court, Mr Ramncwana sought to make corrections regarding appellant's previous convictions. He confirmed that appellant has only been convicted twice previously for drug related offences. That the document he received from the police and relied upon for purposes of his report

does not relate to previous convictions. Asked whether he still stood by his recommendation that the appellant is not a suitable candidate for correctional supervision in light of the fact that he only has three (3) previous convictions – two (2) of which are similar to the one in respect of which he should be sentenced, he had this to say:[4] “The accused Your Worship comes before

this court not as a first time offender for the very offence, Your Worship. Such issue Your Worship has made me to be sceptical in terms of making recommendations saying that he is a proper candidate for correctional supervision". He then left the matter in the hands of the court.

[12] It is trite that the duty to impose a sentence is pre-eminently that of the presiding officer / trial court. The presiding officer must evaluate all the factors that have been placed before him / her and exercise an independent discretion in this regard. This entails that a presiding officer is not bound by any pre-sentence report. Trite also is the principle that in an appeal against sentence, interference is justified on limited grounds. The test in this regard being whether there was a reasonable exercise of the discretion bestowed upon the sentencing court.[5]

[13] It is clear that the magistrate considered all the factors that are relevant to sentencing including the correctional officer's

report as corrected as well as the officer's viva-voce evidence. She also took into account sentences that were previously imposed by courts for dealing in drugs in contravening Section 5(b) of the Act some of which are much higher than what she ultimately imposed in casu. I am not persuaded that there was a misdirection on the part of the court a quo. I am also not persuaded that the magistrate in the court a quo exercised her discretion in this regard improperly or in an unreasonable manner.

[14] For the reasons stated above I am not persuaded that the sentence imposed by the court a quo is excessive, startlingly inappropriate and induces a sense of shock. Interference therewith is not warranted.

Accordingly I propose that the appeal against the sentence be dismissed.

NG BESHE

JUDGE OF THE HIGH COURT

ROBERSON J

I agree, it is so ordered.

JM ROBERSON

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Date Heard : 14 October 2015

Date Reserved : 14 October 2015

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[1] Page 206 of the record, lines 16-20.

[2] Page 383 of the record.

[3] See Commentary of the Criminal Procedure Act: Du Toit et al at 28-10H-4. Service 53 of 2014.

[4] Page 394 line 5-10 of the record.

[5] S v Terbranche 2011 (1) SACR 77 EGC 78 a-b. S v Saddler 2000 (1) SACR 331 at 334 [6]. S v Pillay 1977 (4) SA 531 AD at 535 E-G.

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