IN THE SOUTH GAUTENG HIGH COURT

(The Republic of South Africa)

CASE NUMBER: A87/2013

In the appeal between:

PRINSLOO, HELLBERTH **APPELLANT**

and

THE STATE **RESPONDENT**

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
29/8/2013
DATE SIGNATURE

CORAM: **VICTOR J et VALLY AJ**

JUDGMENT: **VALLY AJ;**

VICTOR J (concurring)

HEARD ON: **27 AUGUST 2013**

DELIVERED ON: **29 AUGUST 2013**

Vally AJ:

A. Introduction

1. The Appellant, a 49 year old male South African citizen was convicted in the Kempton Park Magistrate's Court of contravening Section 5(b) of Act 140 of 1992 read with sections1, 13, 17, 18 and 25 of Act 140 of 1992, as

amended. On the 17 August 2011, he did unlawfully deal in 771.33 grams of cocaine by importing it into South Africa via an aircraft at OR Tambo International Airport in Kempton Park.

2. The Appellant, who was legally represented at all relevant times, pleaded guilty to the charge set out above and handed in a written plea in terms 112(2) of Act 51 of 1977. The guilty plea was accepted by the State and the Appellant was accordingly convicted and sentenced to ten (10) years imprisonment on the 25 January 2012.

3. The Trial Court granted the Appellant condonation for the late filing of the application for leave to appeal and he was granted Leave to Appeal against the sentence only on the 6 December 2012.

B. <u>Sentence</u>

4. As regards appeals against sentences, it is established law "that a court of appeal can only interfere with the exercise of such a discretion by the sentencing court where it is satisfied that the sentencing court misdirected itself, or did not exercise its discretion properly or judicially. Absent such proof the appeal court has no right to interfere with the exercise of a discretion by a sentencing court."

S v Mokela[1]

5. The limited circumstances under which an appeal court can interfere with the sentence imposed by a sentencing court have been distilled and set out in many judgments.[2] In the matter of **S v Whitehead and Others**[3] the test enunciated was whether the sentences " were startlingly inappropriate" or whether "they induce a sense of shock". Similarly in **S v Malgas**[4], the

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[1] 2012 (1)SACR 431 (SCA) at 435 i and 436 a.

[2] Ibid: Pg 435 f to h; See also S v Pieters 1987 (3) SA 717 (A) at 727 F-H;

[3] 2008 (1) SACR 431 at Par 12. This was cited with approval in S v Le Roux 2010(2) 11 at 26 h to i.

[4] S v Malgas 2001 (2) SALR 1222 at 1232 C to D (SCA).

question asked was would the appeal court have regarded the sentence as "shocking, startling or disturbingly inappropriate".

6. It is well established law that a just and fair sentence would be one that takes into account the gravity of the crime, the personal circumstances of the Appellant and the interests of society.[5]

7. The Trial Court did take into account all of these factors when sentencing the Appellant viz. the gravity of the crime, the personal circumstances of the Appellant and the interests of society[6].

8. In mitigation of sentence:

   8.1 Although the Appellant had previous convictions[7], these were old and therefore the Trial Court considered him a first time offender for purposes of sentence[8].

   8.2 The Trial Court recognised that he did not waste the Court's time by pleading guilty[9].

9. In **S v Morebudi**[10], the Supreme Court of Appeal confirmed a sentence of 14 years for contravening Section 5(b) of Act 140 of 1992, albeit for dealing in 1 433kg of dagga. Furthermore it affirmed that it was proper for the court *a quo* to take into account a previous conviction which had occurred more than 20 years previously, to the limited extent that the Appellant should have been aware of the consequence of crime and had not taken heed thereof.

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[5] S v Zinn 1969 (2) SA 537 (A)

[6] Record: Pages 9 and 10.

[7] Record - Pgs 31-36 inclusive.

[8] Record - Pg 9 -Lines 4-7 inclusive.

[9] Record - Pg 9 - Lines 8 & 9.

[10] 1999 (2) 664 (SCA)

10. In **S v Opperman**[11], a 26 year old single parent who was pregnant at the time of her trial and who was the sole supporter of her children sentence of ten years imprisonment for contravening Section 5(b) of Act 140 of 1992 was confirmed on appeal. She was a first offender and had imported 6 353 g of cocaine into the country.

11. There is no evidence to show that the trial court misdirected itself, or did not exercise its discretion properly or judicially.

12. Drug dependency is a scourge in our society. It is destroying families and drug dealers target persons from a young age. It impacts negatively on the whole of our society and can be regarded as a national crisis. The Appellant who was a widower and had two minor children at the time of the offence should be especially aware of the possible consequences of his actions on the lives of his children.

13. The Appellant, as a courier , was an essential link in bringing drugs into the country. He had every opportunity to reconsider his participation in this criminal enterprise at every stage. Instead he chose to travel all the way to Brazil, ingested 771.3 grams of 'bullets' of cocaine at great risk to himself and returned to South Africa with this drug in his body purely for monetary gain.

14. In view of the aforegoing, the sentence of ten years imprisonment cannot be regarded as shocking, startling or disturbingly inappropriate. It is a just, fair, reasonable and balanced sentence.

For all these reasons the appeal against the sentence has to fail. Accordingly, the following order is made:

The Appeal is dismissed.

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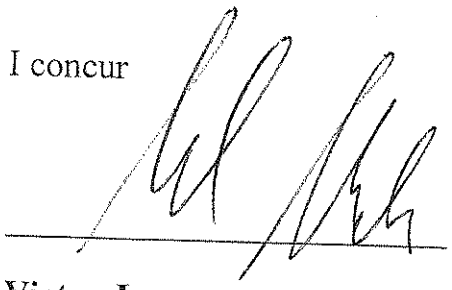
[11] 1997 (1) SACR 285 (WLD)

Vally AJ

Acting Judge of the South Gauteng High Court

Johannesburg.

I concur



Victor J

Judge of the South Gauteng High Court

Johannesburg.

Appearances:

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