

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEAL CASE NO: A31/2022

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> /NO
(3)	REVISED. <u>                    </u>
	<u>08/06/2023</u>
	DATE
	<u>                    </u>
	SIGNATURE

In the matter between:

**DONKO LAJOS**

APPELLANT

And

**THE STATE**

RESPONDENT

**NEUTRAL CITATION:** *Donko Lajos vs The State* (Case Number: A31/2022)

[2023] ZAGPJHC 673 8 June 2023

**MABESELE J ET KUMALO J**

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**J U D G M E N T**

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**MABESELE, J:**

[1] The appellant was convicted of contravention of section 5(b) of the Drugs and Drug Trafficking Act, 140 of 1992 (dealing in heroin). He was sentenced to 15 years' imprisonment. He now appeals against sentence. He contends that the sentence is shockingly inappropriate. He argues that his personal-circumstances justify a lesser sentence.

[2] Punishment is pre-eminently a matter for the discretion of the trial court. In this regard, Holmes JA, in *S v Rabie* 1975(4) SA 855(A) said the following:

'In every appeal against sentence whether imposed by a Magistrate or a Judge, the court hearing the appeal-

(a) Should be guided by the principle that punishment is pre-eminently a matter for the discretion of the trial court, and

(b) Should be careful not to erode such discretion: hence the further principle that the sentence should be altered if the discretion has not been judicially and properly exercised'

[3] The magistrate, in his judgement, considered the personal circumstances of the appellant, the seriousness of the offence and the interests of the society. However, the magistrate seems to have overemphasised the

seriousness of the offence, its prevalence within the court's jurisdiction and aggravating factors. He downplayed the personal circumstances of the appellant, in particular, clean record, age and ill-health of the appellant. The appellant is 65 years old. He suffers from diabetic. For these reasons, this court is at large to interfere with the sentence imposed by the magistrate. With regard to an appropriate sentence, this court has considered the matter of S v Hightower 1992(1) SACR 420(w) wherein the sentence of 20 years imprisonment which was imposed on a 65 year old accused who was convicted of dealing in 220 grams of cocaine was set aside on appeal and replaced with a sentence of 10 years imprisonment of which 3 years were suspended. In S v Nnasolu 2010(1) SACR 560 (KZP) at 561, a sentence of 25 years imprisonment which was imposed on a 31 year old accused who had previous conviction of abuse of dependence-producing substance was set aside on appeal and replaced with a sentence of 10 years imprisonment of which half was conditionally suspended for 5 years.

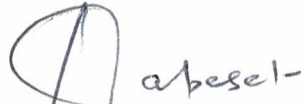
[4] Having considered these cases, this court is of the view that the sentence of 10 years imprisonment is appropriate.

[6] In the result, the following order is made:

16.1. The appeal is upheld.

16.2. The sentence of 15 years' imprisonment is set aside and replaced with the following sentence:


'The accused is sentenced to 10 years' imprisonment.' The sentence is backdated to 30<sup>th</sup> March 2021.

Handwritten signature of M.M. Mabebele in blue ink, written over a horizontal line.

**M.M MABESELE**

(Judge of the High Court Gauteng Local Division)

I agree

Handwritten signature of M.P. Kumalo in blue ink, written over a horizontal line.

**M.P KUMALO**

(Judge of the High Court Gauteng Local Division)

Appearances

On behalf of the Appellant	: Adv S. BOVU
Instructed by	: Legal-Aid Board
On behalf of the Respondent	: Adv. V. MBADULI
Instructed by	: Director of Public Prosecutions
Date of Hearing	: 29 May 2023
Date of Judgment	: 8 June 2023