

IN THE GAUTENG DIVISION OF THE HIGH COURT

PRETORIA, REPUBLIC OF SOUTH AFRICA

28/05/14

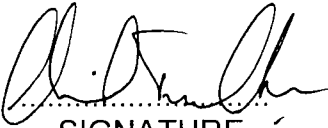
CASE NO: A719/2013

In the matter between:

JOHN OKECHUKWU OKAFER

Appellant

and

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| (1) | <u>REPORTABLE:</u> | <u>YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES:</u> | <u>YES / NO</u> |
| | 22/05/14 DATE |  SIGNATURE |

THE STATE

Respondent

JUDGMENT

Tuchten J:

- 1 The appellant and two co-accused were charged with four counts of dealing in cocaine, contrary to the provisions of the Drug Trafficking and Drugs Act, 140 of 1992. The appellant was also charged with various alternative counts. He was found guilty on the main counts in count 2, involving 0,7 gm of cocaine, and count 3, involving 10 tablets containing cocaine. The two acts of dealing took place on consecutive days.

- 2 The convictions occurred after a carefully planned police operation against a drug ring operating in Phalaborwa. The evidence against the appellant was obtained by the police who, posing as ordinary customers, bought product from the appellant. The appellant pleaded not guilty to the charges against him and a lengthy trial ensued, during which the appellant, as was his right, challenged the evidence adduced against him but did not give evidence himself. After the appellant was convicted, he chose not to give or adduce any evidence in mitigation and was content that his legal representative make submissions from the bar which included information as to the appellant's personal circumstances. This information was accepted as correct for purposes of sentence.
- 3 At the time of his conviction, the appellant was 33 years old, single and with no dependents and a first offender.
- 4 The appellant was sentenced to 5 years imprisonment on each count. With the leave of the court *a quo*, he appeals against the sentences. On his behalf it is submitted that because the value of the drugs was said to be R2 000 and the appellant was a first offender, the sentence was too harsh. No misdirection on the part of the regional magistrate is suggested. His counsel argues that the sentences should run concurrently, thereby reducing the sentence to an effective five years.

5 I do not agree. The appellant was the visible face of a commercial operation, carried out for profit, to distribute these drugs into the community. One can only speculate about how many lives he and his associates helped to ruin by the distribution of the pernicious substance in which he and his associates dealt but the number cannot be negligible. Counsel for the appellant referred to the minimum sentencing regime applicable to such crimes but I need not go into that because the court *a quo* did not sentence the appellant pursuant to that regime.

6 The evidence before the court pointed ineluctably towards the conclusion that the appellant was a career drug dealer. His business was to be where potential customers could find him and supply their needs. There is no indication on the record that the appellant was motivated to commit these crimes by anything other than the desire for commercial gain. The evidence that the quantities involved were relatively small is not to my mind of great significance in the present context. The appellant was a drug dealer. He supplied product in the quantities his customers wanted and his capacity to push product into the market was limited only by his sources of supply. The appellant was not convicted of one isolated incident of drug dealing. He made a business of dealing in drugs, so the fact that the two offences for which he was convicted were committed over a short period is in

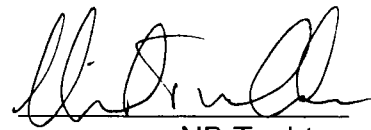
context not a mitigating circumstance either. He displayed no remorse. There is nothing on the record to show that the appellant has good prospects of rehabilitation, even with the encouragements towards rehabilitation provided by the prison authorities.

7 The appellant was convicted of contravening s 5(b) of the Act. Under s 17(e) read with s 13(f) he was liable to go to prison for 25 years on each count and, in addition, to pay a fine entirely in the sentencing court's discretion as to amount. This is an indication of how very seriously drug dealing is regarded in this country.

8 I do not regard the sentence as harsh. The appellant will need to undergo a lengthy period of imprisonment if he is to have any prospect of rehabilitating himself as a decent person. The appeal must fail.

9 I make the following order:

- 1 The appeal is dismissed;
- 2 The convictions and sentences imposed upon the appellant, John Okechukwu Okafer, are confirmed.



NB Tuchten
Judge of the High Court
22 May 2014

I agree.



SP Mothle
Judge of the High Court
22 May 2014