

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION: PRETORIA)**

APPEAL CASE NO: A107/2014

DATE: 28 AUGUST 2014

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| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES:
YES/NO |
| (3) | REVISED. |

In the matter between:

JOSEPH LINUS

V

THE STATE

JUDGMENT

1. The appellant was convicted and sentenced to imprisonment for a period of ten (10) years by theTzaneen magistrate on the 3rd December 2013.This was pursuant to his plea of guilty on two counts of dealing in drugs in contravention of the provisions of section 5(b) read with sections 1, 13, 17, 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 , ("The Act") The appellant admitted in his statement in terms of

section 112(2) of Act 51 of 1977 ("The Criminal Procedure Act") that he was arrested after he, on two occasions, sold units of powder containing methcathinone and methamphetamine to an undercover agent duly authorised in terms of section 252A of The Criminal Procedure Act. He further admitted that these substances produce dependency and are prohibited. The appeal is only against sentence imposed by the magistrate.

2. The appeal is brought primarily on two grounds. Firstly, that the magistrate overemphasized the interest of the community and overlooked other factors that she was expected to consider when imposing sentence, including the personal circumstances of the appellant. Secondly, that the magistrate did not consider other corrective form of punishment other than a custodial sentence. Counsel for the appellant conceded that the offences the appellant have been convicted of are serious. Counsel for the appellant, Mr Bokaba, however argued that not all serious offences warrant punishment in the form of imprisonment. In support of his argument he referred the court to the decision in **S v Chipape 2010 (1) SACR 245 (GNP) at 249 [7]**.

3. The paragraph reads as follows;

- a. 'In sentencing one has to consider the nature, magnitude and effect of the offence itself, the interest of the society, the interest and circumstances surrounding the offender and circumstances under which the offence was committed. In appropriate cases the sentencing court should also take into account the element of mercy.'

4. Mr Bokaba referred the court to a number of High Court and Supreme Court of Appeal decisions among others **S v Abrahams 1996 (1) SACR 570 (A)** and **S V Mahlangu 2004(1) SACR 280 (TPD)** where the sentences for long term of imprisonment for contravening the provision of section 5(b) read with ss 1, 13, 17, 25 and 64 of Act 140 of 1992 were reduced and that the value of the substances involved in those cases were

substantially bigger than those in the matter. He is of the view that a sentence of correctional supervision was the most suitable sentence in the circumstances of this case.

5. Counsel for the State on the other hand argued that the sentence of the magistrate cannot be faulted . In his own words he stated that one need not go further than the pavement in front of the court room to see the devastating effect the consumption of drugs has on our communities. He further argued that offences such as one the appellant has been convicted of calls for a sentence that has deterrence as its objective.
6. The offence the appellant has been convicted of is very serious. It indeed has a devastating effect on the communities. It destroys the youth and frustrates parents, its consumption leads to dysfunctional families and disrupts proper schooling. It is a source of most social ills in our societies;-**S v Jimenez 2003(1) SACR 507 (SCA)**. It also adversely affects our economy in that operations such as the one that led to the arrest of the appellant do not come cheap. Lots of tax payer's money is injected into them .in order to assist the police in investigating and combating the commission of these type of crimes. Such funds could be used by the state towards health care facilities, education and other services. Families' disposable income go towards rehabilitating those who are already addicted. The offence the accused has been convicted of is those that judge Legodi describes as most serious as to warrant a sentence of imprisonment - see **Chipape supra at 254 at g**.
7. Section 17(e) of the Act prescribes a sentence of imprisonment for a period not exceeding 25 years, or to both such imprisonment and such a fine as the court may deem necessary to impose for a person convicted of an offence of contravening the provisions of section 5(b) of the Act. This also shows how serious the legislature views such offences and the

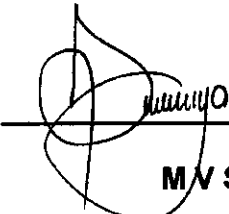
sentence imposed by the magistrate in this matter is not half of the maximum prescribed sentence.

8. The magistrate has accepted the personal circumstances of the accused as migratory factors . She went further to weigh them against the other factors and properly arrived at conclusion that it was necessary to protect the members of the community, and that in my view, includes the appellant's own children as well, against the harmful products the accused was dealing in. The appellant's argument that he poses no danger to society by dealing in this harmful substance is ridiculous.
9. The court accepted that the appellant is a first offender. However the fact that he was willing to sell drugs to undercover agent cannot be ignored. It is a general rule that first offenders should where possible not be send to prison but each and every case has to be decided on its own merits. In **S v Tshabalala 1999 (1) SACR 412 (C)** a first offender was sentenced to a prison term for dealing in drugs.
10. According to the judgement in **S v Nel 2013 (1) SACR (GSJ) 155 at 157** paragraph 14 it is competent for a judicial officer to impose a sentence of correctional supervision in terms of section 276(1) (h) of The Criminal Procedure Act on a person convicted of an offence of contravening the provisions of section 5(b) of the Act. Counsel for the appellant conceded that the magistrate in this matter could not have done that in the absence of a probation officer's report.
11. It is indeed necessary, as the magistrate has stated in her judgment, that a proper sentence to impose the circumstances is a sentence with a deterrent element, not only to the appellant, but to other would be drug dealers as well.
12. I find that the magistrate's sentence is not shockingly disproportionate to warrant interference by the appeal court.

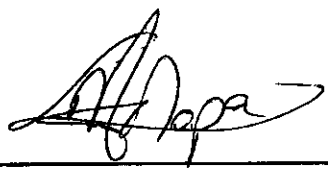
In the result I propose the following order:

The appeal on sentence is dismissed

1


M V SEMENYA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION

I agree,


L M MOLOPA-SETHOSA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION

It is so ordered.

Date heard: 18 AUGUST 2014

Advocate K T Bokaba

Counsel for the Appellant

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012 303 7552

State's Advocate A T Moetaesi

Counsel for the Respondent

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