

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

29 November 2007

STATUS: Immediate

Hammond v The State [2007] SCA (RSA)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Mr Nicholas Hammond was convicted in a magistrate's court of dealing in drugs (Methcathinone – 'Cat') and sentenced to 12 years' imprisonment. His appeal to a full bench of the High Court, Johannesburg, failed. Today the Supreme Court of Appeal dismissed his further appeal against conviction, but reduced his sentence to five years' imprisonment, two of which are suspended.

In testifying in his own defence, Hammond said that he had become involved with friends who were drug-dealing, and he had willingly participated in trying to find drugs to sell them. He had been asked by a brothel owner in Durban, Judy, to find Cat for her and when he could not she became angry and abusive. After a while she phoned to apologize to him, and advised him about a source. She arranged for him to collect the drugs and to deliver them to a man known as Yunus, who would be waiting at a BP Service Station near Gold Reef City, Johannesburg. Hammond had met Yunus previously. Hammond admitted that he would earn about R60 000 for his role in selling the drugs and that he had participated purely for financial gain.

When at the service station Hammond and his driver were arrested by two police officers, who had been instructed to apprehend them. The police found over 3kgs of Cat in a tog bag in the car. The driver was also charged, but was

acquitted by the trial court since Hammond testified that he had hired the driver for the day, and that the driver knew nothing about the drugs found in his car. It transpired that Yunus was a police agent, and that Judy was as well.

Before his trial commenced, Hammond asked whether the State was relying on evidence of a police trap. The prosecutor replied that she was not, but that should evidence be led during the course of the trial as to the existence of a trap, the State would rely on it. The defence was that Hammond had been trapped and that his evidence should be inadmissible in terms of s 252A of the Criminal Procedure Act 51 of 1977 since the police had gone further than merely providing an opportunity to commit the offence. It was contended also that the evidence of the State was contaminated, since the two police officers who arrested Hammond and the driver had made misleading statements prior to the trial. They had, however, before the trial started, made supplementary statements revealing the identity of their informant and referring to Yunus, whose presence on the scene of the arrest they had not initially disclosed.

On appeal Hammond argued that his trial had been unfair: the State had not come to court with 'clean hands'. It had not led all the available evidence and had concealed evidence of the trap. The Supreme Court of Appeal today dismissed the appeal against conviction. It held that the evidence of Hammond as to the police trap was admissible, since the police had not done anything more than providing an opportunity to deal in Cat. It also held that there was nothing on record to show that the State had concealed, or failed to lead, evidence available to it: the trial was not unfair. It upheld the appeal against sentence, however, finding that the sentence of 12 years' imprisonment induced a sense of shock. Although the offence was very serious, Hammond had been entrapped; he had been frank with the trial court, and had not tried to evade responsibility for what he had done. The Supreme Court of Appeal held that a sentence of five years' imprisonment should be imposed, but that two years should be suspended.

The judgment can be found on www.supremecourtofappeal.gov.za
