

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

A176/2011

5 DATE:

26 AUGUST 2011

In the matter between:

MZIMAZI MARASHA

Appellant

and

10 **THE STATE**

Respondent

J U D G M E N T

15 **DOLAMO, AJ:**

The appellant pleaded guilty in terms of section 112(2) of the Criminal Procedure Act to dealing in 286.3 kilograms of cannabis, commonly known as dagga, in contravention of section 5(b) read with sections 1, 17, 18 and 21 of the Drugs & Drug Trafficking Act 140 of 1992. He was sentenced to five years imprisonment. The motor vehicle which was used in the commission of the offence, belonging to one Andile Bokwana, and the dagga were declared, in terms of section 25 of the said Act, forfeited to the state. The appellant applied for, and

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was granted, leave to appeal against the sentence. He is pursuing his appeal before this court.

The circumstances that led to the commission of this offence
5 appears from the evidence of the investigating officer in the
matter, one Van Tonder, given on the occasion of the
unsuccessful bail application by the appellant. They were
briefly as follows: the police received a tip off that a vehicle
would be transporting dagga from Worcester and going in the
10 direction of Cape Town. They were furnished with a
description of the vehicle. They arranged a stakeout on the N1
freeway and, as informed, a vehicle fitting the description was
spotted. This vehicle was forced to come to a stop. Appellant
tried to escape therefrom, but was cornered and arrested. In
15 the vehicle, which was a *bakkie*, were nine bags of dagga
wrapped in black plastic refuse bags.

In the plea-explanation in terms of section 112(2) of the
Criminal Procedure Act, the appellant stated that the dagga
20 was intended for his friend's use and that he will have been
rewarded for his efforts. This explanation accords with the
definition the legislature has assigned to the meaning of
dealing in, in section 1 of the said Act. The appellant attacked
the sentence imposed on him on the basis that the learned
25 magistrate erred by overemphasising the public interest and
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general deterrence in arriving at what she considered to be a just sentence, and ignored other traditional aims of punishment, such as individual deterrence, rehabilitation and reformation.

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She also misdirected herself and, therefore, did not properly exercise her discretion, it was argued, by not giving sufficient weight to the appellant's personal circumstances, which were: That the state did not prove any previous conviction against
10 him. That he was 23 years old, a fairly young adult male and a suitable candidate for rehabilitation. That he was employed, doing what is generally known as piece jobs. That he had spent more than a year in custody awaiting trial, which exposed him to the harsh conditions of prison life. That given
15 the role he played, a sentence of five years imprisonment was unjustifiably excessive.

The state, on the other hand, in its heads of argument submitted that the court *a quo* was aware of all the mitigating
20 factors; at all times aware of the general principles applicable when weighing an appropriate sentence; that not only were the personal circumstances of the appellant taken into consideration, but that the seriousness of the offence and the interest of society were also considered; that the serious
25 nature of the offence and the interest of society overshadowed

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the appellant's personal circumstances; that given the seriousness of this offence, imprisonment in the circumstances was an appropriate sentence and that a five year imprisonment term was not shockingly inappropriate a sentence as to justify
5 interference therewith.

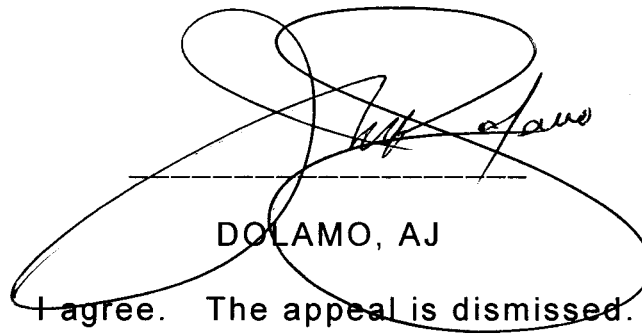
The principle applicable to an appeal on sentence are settled. It is trite law that in the absence of a material misdirection, no court on appeal may interfere with the sentence of a trial
10 court. If there is no material misdirection justifying an interference with the sentence imposed by the trial court, we are not at liberty to interfere therewith simply because we will have preferred a different sentence. I am of the view that the learned magistrate took into consideration the personal
15 circumstances of the appellant, properly weighed them against the seriousness of the offence, the interest of society and based on that, arrived at the conclusion that the appropriate sentence will be imprisonment for a period of five years. There is nothing on record to justify a conclusion that she may
20 have placed more emphasis on one set of factors at the expense of others, or that she misdirected herself in any way as suggested by the appellant.

In the circumstances, I find no misdirection or any improper
25 exercise of her discretion that will justify an interference by
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this court with the sentence. The appeal, therefore, stands to fail. The order I propose is that the appeal must be dismissed.

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DOLAMO, AJ

GRIESEL, J: I agree. The appeal is dismissed.

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GRIESEL, J