



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: **R123/2017**

In the application between:

THE STATE

and

MAKEKA MAVUSO

CORAM: REINDERS, J *et* CHESIWE, AJ

JUDGMENT BY: CHESIWE, AJ

DELIVERED ON: 14 SEPTEMBER 2017

REVIEW JUDGMENT

[1] This is a special review under section 304 (4) of Act 51 of 1977, as requested by Magistrate Redelinghuys of Parys.

[2] After the conclusion of the trial and sentencing on 7 July 2017 the learned Magistrate Redelinghuys noted on signing the warrant that the sentence imposed was not in accordance with the provisions of the Act.

The sentence reads:

“The accused is sentenced to a fine of R10 000,00 or 18 months imprisonment.”

[3] The background facts of the case and the reason for the request of the learned magistrate are fully set out in a memorandum which is referred to this court together with the records of the proceedings.

[4] The memorandum reads:

- “1. On 7/7/2017 at Parys Magistrates Court, the accused represented by Me Moogudi from the Legal Aid Board, pleaded guilty and was convicted on an offence of contravening section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992, for dealing in 62,87 kg of dagga.
2. The court thereupon imposed a sentence of a fine of R10 000 (ten thousand Rand) or 18 (eighteen) months imprisonment.
3. After the case was finalized and the warrant was submitted to me to be signed, I realized that the sentence that was imposed is not in accordance with the provisions of this Act.
4. The accused is found guilty of contravening section 5(b) read with section 13 (f) of Act 140 of 1992.
5. Section 17(e) of Act of 1992 read as follows:

“17. Penalties – any person who is convicted of an offence under this Act shall be liable – (e) In this case of an offence referred to in section 13(f) to imprisonment for a period not exceeding 25 years, or to both such imprisonment and such fine as the court may deem fit to impose”

6. For this offence it is then imperative that the sentence in the first place must be imprisonment (though it might be suspended) (and a further portion of a sentence, for example a fine with the alternative of imprisonment may be added.)
7. The court erred for not imposing imprisonment as sentence as required by the Act.
8. The learned review Judge is humbly requested to set this sentence aside and referred this case back to the court to impose a sentence in accordance with the law.”

[4] Section 17(e) of the Drugs and Drug Trafficking Act 140 of 1992 (the Act) provides that:

Penalties - any person who is convicted of an offence under this Act shall liable:

“(e) In this case of an offence referred to in section 13(f) to imprisonment for a period not exceeding 25 years, or to both such imprisonment and such fine as the court may deem fit to impose.”

[5] I am in full agreement with the magistrate that the sentencing court being functus officio there is not much it could do with the problem of changing its own sentence. Neither do the provisions of Section 298 of the Criminal Procedure Act of 1977 provide a remedy for the magistrate. Section 298 of the act reads:

“When by mistake a wrong sentence is passed the court may, before or immediately after it is recorded, amend the sentence.”

- [6] I agree with the magistrate's insistence that the sentence should be rectified, because to do so will give certainty to a future court dealing with sentencing of the accused in the event that the accused is convicted of a similar crime. The learned magistrate to also take into consideration when correcting the sentence that the accused is not prejudiced by this correction.
- [7] To my mind the true intention of the trial magistrate can at best be ascertained from the record that after finalising the trial and when the warrant was submitted for his signature, he noted that the sentence imposed is not in accordance with the provisions of the Act.
- [8] The learned magistrate is correct in that for this offence it is imperative that the sentence in the first place must be imprisonment though it may be suspended with a fine and the alternative of imprisonment may be added.
- [9] I therefore conclude that the learned magistrate is correct that the correct sentence should be imposed in terms of the Act.
- [10] In the result thereof, I make the following order:
1. The conviction shall stand.
 2. The sentence is set aside and the matter is referred back to the trial court for sentencing in accordance with Section 17(e) of Act 140 of 1992.

CHESIWE, AJ

I concur

REINDERS, J