CRI/A/78-79/79

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

THABO MTHONGOA	1st Appellant
SEARGENT ZINI	2nd Appellant

v

REX	Respondent

Reasons For Judgment
Filed by the Hon. Judge Mr. Justice M.P. Mofolcng on the 6th day of February, 1980.

The appellants were convicted of dealing in a dangerous medicine viz. dagga contrary to section 3(a) of the Dangerous Medicines Act 1973. The amount involved was 54 Kg (i.e. 27 Kg. for each appellant). They had pleaded guilty. From the outline of the evidence by the prosecutor in terms of section 235(1) of the Criminal Procedure and Evidence Proclamation 59 of 1938 it is quite obvious that the appellants were properly convicted. However, it is against the sentences that the appellants have directed this appeal.

It is trite law that the passing of sentence on an accused person is pre-eminently in the discretion of the trial Court. However, that discretion must be exercised judicially and not arbitrarily. It is true that the learned magistrate states that the offence with which the appellant have been found guilty is prevalent in his area. In this particular case there are other equally important factors which the learned magistrate ignored. Both appellants were first offenders. They pleaded guilty and thereby showed remorse. From the quantity of dagga found in their possession it is obvious that they were beginners in the game of dealing in dagga. They are both relatively young. They both told the Court that they needed the money desperately.

/They were .....

They were thus "trying their luck and were arrested." In a review case, Rex v. Mlapho No. 71/79 where an accused was found guilty of dealing in dagga and the weight involved was not less than 52 kilos the accused was sentenced to pay M500 or undergo imprisonment for a period of 15 months. The accused was comparatively young; he was a first offender and was "trying his luck out" and"unfortunately was arrested," Rooney, J, said :

> "In effect he has been sentenced to serve 15 months imprisonment although he has no previous convictions. This is altogether too severe a sentence in the circumstances."

That matter also came from the district of Berea. Now, in the review cases of Rex v. Naleli Mahlatsi (CR. 527/79) and Rex v. Mafuso & Another (CR. 613/79) the learned the Chief Justice said at page 2:

> "This kind of erratic sentencing in dagga offences is causing us considerable alarm in the High Court."

While each case must be dealt with in its own merits there should be a striving towards uniformity, or consistency or equality of sentences. This principle is very, very important and must constantly be kept in mind by a judicial officer who is about to impose a sentence on an accused person. The desparity should not be too glaring. In the present matter under the discussion not only did the learned magistrate ignore the factors I have mentioned but seems in addition not to have read the learned Judges reviews (supra).

It was for the above reasons this Court found itself at large and it, therefore, set aside the sentence imposed by the learned magistrate on each appellant. I substituted therefore the following :

> "R200 or 7 months imprisonment with effect from the date of appellants conviction."

I may just add that Mr. Mdluli, who appeared for the Crown, very fairly, in my view, agreed with the new sentences and regarded them as being fair.

In conclusion.....

In conclusion I wish only to draw attention to a glaring omission and that is: the learned magistrate does not appear from the record of this case to have made an order of forfeiture in terms of section 26 of the Dangerous Medicines Act. The declaration of such forfeiture in terms of the said section is mandatory. (See Rex v. Johannes Meyer, Review Order 20/79 (unreported) at page 2.) If mistakes of this magnitude are, in the future, to be avoided by the learned magistrate judgments (in all forms) of This Court must be read.

JUDGE.
6th day of February, 1980.

Appellants : In Person
Respondent : Mr. Mdladi.