



'Not Reportable'

CASE NO.: CA 21/2012

IN THE HIGH COURT OF NAMIBIA

MAIN DIVISION, HELD AT WINDHOEK

In the matter between:

CHUKWUJEKWU NWOYE OKAFORUDEJI

Appellant

and

THE STATE

Respondent

CORAM: **PARKER, J et MILLER, AJ**

Heard on: 2012 July 30

Delivered on (*ex tempore*): 2012 July 30

APPEAL JUDGMENT

MILLER AJ: [1] The appellant in this matter who is a 35 year old male was convicted upon his plea of guilty by the Regional Court Magistrate in Windhoek on a charge of contravening section 2(c) of Act 41 of 1971.

[2] In substance, allegation against the appellant was that on 25 of February 2010, he was found to be dealing in one thousand and twenty-seven (1027) grams of

cocaine. The facts admitted by the appellant and established at the trial are to the effect that the appellant acted as a courier conveying the drugs found in his possession from South America with Angola being his final destination.

[3] The Magistrate in a reasoned judgment as far as sentence was concerned, imposed at the conclusion thereof a sentence of 10 years imprisonment of which 2 years were suspended for 5 years on condition that the appellant was not convicted again of contravening section 2(c) of Act 41 of 1971 committed during the period of suspension.

[4] It is against that sentence that the appellant appeals to this court. We are indebted to counsel for the appellant and counsel for the State for the comprehensive and instructive heads of argument they filed.

[5] It is accepted and almost trite that this court sitting as a Court of Appeal does not have an unfettered discretion to interfere with sentences imposed by trial courts. This court's power to interfere is confined to instances where there are irregularities and misdirections on the part of the Magistrate who imposed the sentence or where the sentence is in the circumstances shockingly inappropriate.

[6] Mr Namandje, who appeared for the appellant before did not, seek to pursue any argument based on misdirection on part of the Magistrate and in my view correctly so. It is apparent from a reading of the Magistrate's judgment that he adopted a balanced approach to the question of sentence. Mr Namandje instead confined his submissions to one that the sentence imposed by the Regional Magistrate concerned was shockingly inappropriate and during argument before us he appeared to suggest that this is a case where a fine ought to have been considered by the Regional Magistrate.

[7] I do not to agree, with that submission if that is indeed what it amounted to. The international trafficking in drugs between States and continents is not only a Namibian problem. It is an, international problem and it behoves courts in Namibia, when persons are found within the jurisdiction of this court engaged in smuggling of drugs internationally, to make it plain that the courts will also do their duty in the international fight against drug trafficking. The fight against drug trafficking is an international one and one must be slow to impose sentences that will discourage those drug enforcement agencies involved in drug combating internationally by imposing sentences that may create the impression that Namibia is a safe haven where drugs can be distributed into Namibia and neighboring states.

[8] Mr Namandje makes some point of the fact the State seems to suggest that the appellant was a Nigerian national who had brought drugs into Namibia. That fact was not found by the learned magistrate and we accept that the appellant has admitted, that although of Nigerian origin, he was a Namibian permanent resident at the time. It is not so much in our view the nationality of the particular drug courier that one sanctions but the fact of the activity that he was engaged in.

[9] Mr Namandje lastly referred this court to the judgment in *The State v Daniel Joao Paulo & Another* which is an unreported judgment of this court on 9 February 2011, in which the High Court in that case imposed sentences less than imposed by the Magistrate in this particular case. The *Daniel Joao Paulo* case can be distinguished from this case on the basis that the judges who wrote the judgment took into account that the accused in that case had already spent some 3 years in custody before the sentence was imposed which is clearly not the case here. In this the appellant was in custody for no longer than 6 months before he was sentenced.

[10] In all the circumstances, I do not find the sentence to be shockingly inappropriate and on that basis the appeal against sentence be dismissed.

MILLER, AJ

I agree.

PARKER, J

COUNSEL ON BEHALF OF THE APPELLANT: Mr S Namandje

Instructed by: Sisa Namandje & Co. Inc.

COUNSEL ON BEHALF OF THE RESPONDENT: Mr J E Eixab

Instructed by: The Office of the Prosecutor-General