THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

CASE NO. 247/96 In

the matter between

MCINISELE BIBI NOCAMPHALALA

APPELLANT

AND

THE STATE

RESPONDENT

BEFORE: HEFER, NIENABER and SCHUTZ JJA

HEARD: 18 MARCH 1997

DELIVERED: 20 MARCH 1997

SCHUTZ JA

J U D G M E N T

SCHUTZ JA:

With leave granted upon a petition to the Chief Justice the appellant appeals against a sentence of 16 years imprisonment, of which two were conditionally suspended. This sentence was imposed by a regional court at Carolina. An appeal to the Transvaal Provincial Division failed.

The appellant pleaded guilty to and was found guilty of contravention of s 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 - of dealing in a dangerous dependence producing substance - in his

instance 38 954 Mandrax (methaqualone) tablets.

The circumstances in which the offence was committed are not in dispute. The appellant was requested in Mozambique by persons whose identities are not revealed in the record to act as a courier for a fee of R2 000 to carry the tablets from there to Orlando, Johannesburg. Further details of his relationship with these persons were not given. The packets containing the tablets were packed into the cavities in the side wall of a bakkie. After travelling through Swaziland he entered South Africa at the Oshoek border post on 10 February 1994. The police searched the bakkie and, on removing the plates covering the cavities, the presence of the Mandrax was revealed. Its street value was R973 850.

The appellant was a Swazi citizen aged 44 years. He supported a

wife, three children and his 70 year old father. A qualified motor mechanic, he earned his livelihood out of business and part time farming on his father's farm. He was to inherit the farm on his father's death.

He is a first offender. After his arrest he gave the police his assistance, and pleaded guilty.

The regional court declared the vehicle forfeit. There was some debate in this Court as to whether it was owned by the appellant. To my mind, if he wished to make a point of forfeiture at his expense he should have established the facts. In any event I do not attach much weight to the forfeiture. One of the risks taken by persons committing the sort of crime that the appellant has committed is forfeiture. This is in addition to any sentence that may be imposed.

The crime is a very serious one, particularly having regard to the quantity involved and the extent of the human wreckage which it could cause. On the other hand, the personal circumstances of the appellant have to be taken into account, as also the fact that at 44 he is a first offender. It was also pointed out that he was only a courier. This latter point should not be overemphasized. The courier is as much an essential as the master mind.

Mr Reinders for the appellant has realistically abandoned resort to any misdirections and any suggestion that a suspended sentence, a fine, or a sentence of corrective training would meet the case. Imprisonment is compulsory, the maximum term prescribed being 25 years. Mr Reinders also conceded that a lengthy term of imprisonment is

appropriate, but contended that the sentence imposed is so severe as to entitle interference. In this regard he relied on the decision in ,S v Abrahams 1996 (1) SACR 570 (A). The circumstances in that case were broadly comparable, save that the appellant was 55 (44 in this case) and the number of tablets 50 000 (38 954 in this case). There a sentence of 12 years with a further three years conditionally suspended was reduced to nine years.

I accept Mr Reinders'submission that the sentence is excessive. One of the reasons for that conclusion is that it is close to two thirds of the maximum: and this for a first offender who is not the organiser. Relatively little penal space is left for the man at the hub of the system, having previous convictions and caught with an even much larger

quantity of drugs. I also agree with the remark of Vivier JA in Abraham's case, at 571 f - g, that the suspended portion of the sentence, coming after such a long term of imprisonment, seems to be inappropriate.

The appeal succeeds. The sentence imposed by the regional magistrate is set aside and there is substituted for it a sentence of ten years imprisonment.

W.P.SCHUTZ
JUDGE OF APPEAL

HEFER JA)
R NIENABER JA) CONCU