

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(CRIMINAL JURISIDCTION)

APPEAL NO. 81 OF 2007

BETWEEN:

LLOYD BWALYA

VS

THE PEOPLE

CORAM: LEWANIKA, DCJ, SILOMBA AND MUSHABATI, JJS.
On 4th and 6th September, 2007

For the Appellant: E.M. SIKAZWE, Acting Director of Legal Aid
Department

For the Respondent: C.F.R. MCHENGA, Director of Public
Prosecutions

JUDGMENT

MUSHABATI, JS, delivered the judgment of the Court.

LEGISLATION REFERRED TO:

1. CRIMINAL PROCEDURE CODE, CAP 87 – S 217
2. NATIONAL DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, CAP 96 – SS 6 AND 44

This is an appeal against sentence only. The appeal against conviction was abandoned.

The Appellant was charged and convicted before the subordinate Court of the first class for Ndola District of one count of trafficking in psychotropic substances contrary to Section 6 of the Narcotic Drugs and Psychotropic Substances Act Cap 96 of the Laws of Zambia as read with Statutory Instrument No. 119 of 1995.

The particulars of the offence were that the Appellant on the 24th day of July 2003 at Ndola did traffic in psychotropic substance namely 40 grammes of marijuana, a herbal product of cannabis sativa without lawful authority.

He pleaded guilty and was committed to the High Court in terms of Section 217 (1) of Criminal Procedure Code, Cap 88 of the Laws for sentencing because he was a subsequent offender, having been convicted of a similar offence before for which he was sentenced to 6 months imprisonment with hard labour.

The Appellant, as a subsequent offender, was liable, under Section 44 of the Narcotic Drugs and Psychotropic Substances Act, to imprisonment to a term of not less than ten years. The High Court sentenced him to 15 years imprisonment with hard labour, hence this appeal before the Court.

The Appellant filed one ground of appeal in which he said the lower Court erred in principle when it sentenced the Appellant to 15 years

imprisonment when he readily pleaded guilty to the offence thus showing contrition and did not waste the Court's time.

In sentencing the Appellant the lower court acknowledged the fact that the offence with which the Appellant was convicted of attracted a minimum custodial sentence. He did not however, give reasons why the Appellant deserved a more enhanced sentence than the minimum one.

As we have already stated above, the minimum statutory sentence for a subsequent offender is ten years imprisonment. The Appellant, as submitted on his behalf, readily admitted the charge. This should have been taken into account in his favour. Further the amount of the drug that was found on him was only 40 grammes, which was not substantial.

It is always a principle of sentencing that a sentence to be imposed against an offender must be commensurate to the offence. A sentence of 15 years, five years above the minimum mandatory statutory sentence of ten years, cannot be said to be commensurate to the offence committed by the Appellant taking into account the amount of the drug found on the Appellant, and the fact that he readily admitted the charge.

We have no doubt that the sentence of 15 years, in this case, was on the higher side and we find no justification why the lower Court did not

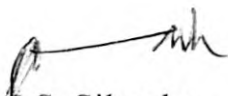
impose the minimum mandatory statutory sentence, which in our view, was adequate in the circumstances.

The sentence of 15 years was therefore, wrong in principle because it was on the higher side. It comes to us with a great sense of shock. We are therefore, allowing the appeal by setting aside the sentence of 15 years and substituting it with the mandatory minimum statutory sentence of ten (10) years. The sentence shall run with effect from 30th July, 2003, the date of the Appellant's arrest.

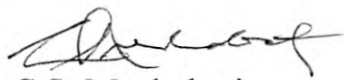
We wish to comment in passing, that the lower court's record showed that the Appellant was sentenced to 6 months imprisonment on 20th September 2003. This is the conviction which was referred to as the Appellant's previous conviction. The date on which the present offence was committed was earlier than 20th September 2003. We take it that this was a mere typographical error which did not go to the root of the case hence it was not raised by the Appellant.



D.M. Lewanika
DEPUTY CHIEF JUSTICE



S.S. Silomba
SUPREME COURT JUDGE



C.S. Mushabati
SUPREME COURT JUDGE