

IN THE HIGH COURT OF SWAZILAND

CRIM. CASE NO.169/87

In the matter of

REX

VS

DERRICK J. HLANDZE

CORAM: HANNAH, C.J.

FOR THE CROWN

FOR THE DEFENCE

JUDGMENT ON COMMITTAL FOR SENTENCE

(28/10/87)

Hannah C . J .

The accused has been committed to this Court for sentence pursuant to section 292 of the Criminal Procedure and Evidence Act following his conviction by the Senior Magistrate, Mbabane of unlawful possession of 24.26 grams of opium and unlawful cultivation of twenty three plants of dagga.

The offences fall to be punished under section 8(1) of the Opium and Habit-forming Drugs Act, 1922 which provides for a fine not exceeding E2,000 or, in default of payment thereof, imprisonment not exceeding five years or such imprisonment without the option of a fine, or both such fine and imprisonment. Section 8(2) provides:

"Notwithstanding anything in the Magistrate's Court Act No.66 of 1938 or in any other law, a magistrate's court of the First Class may impose

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a punishment not in excess of the maximum punishment set out in subsection (1) hereof."

Accordingly, the Senior Magistrate has the same jurisdiction as to sentence in the instant case as does this Court.

In committing the accused to this Court for sentence the learned magistrate observed that it was "a test case" and that it was his view that it was a proper case for sentencing in the High Court. He added: "This will also assist the courts in formulating a general guideline on sentencing in cases of this nature." With great respect, no basis exists in our law for committing a convicted offender for sentence by the High Court for these reasons however commendable they may be. Section 292 of the Criminal Procedure and Evidence Act (which deals with committals to the High Court for sentence after conviction in a magistrate's court) is concerned solely with cases where the sentencing power of the magistrate's court is inadequate. Clearly that is not the case in the present matter.

Accordingly, the order committing the accused to this Court for sentence is set aside and the case is remitted to the Magistrate's Court with a direction that the magistrate proceed to sentence the accused .

N.R. HANNAH

CHIEF JUSTICE