

IN THE HIGH COURT OF SWAZILAND

In the matter of:

THE KING

vs

JOBHA MDLULI

DISTRICT OF MANZINI

REVIEW CASE NO. 38/89

JUDGMENT ON REVIEW

(22.2.1989)

DUNN. J.

The accused appeared before the Magistrate, Manzini, charged with possession and cultivation of dagga in contravention of Sections 7 and 2(1)(b) respectively of the Opium and Habit Forming Drugs Act No.37/1922. The accused pleaded guilty and was sentenced to a total fine of E210.00 in default of which 200 days imprisonment. The sentence was imposed on the 9th January 1989 and the Magistrate ordered that the sentence be backdated to the 30th December 1938.

The order that the sentence operate retrospectively calls for correction. Section 318 of the Criminal Procedure and Evidence Act No.67/1933 reads:-

Subject to Sections 300(2) and 313, a sentence of imprisonment shall take effect from and include the whole of the day on which it is pronounced unless the court, on the same day on which sentence is passed, expressly orders that it shall take effect from some day prior to that on which it is pronounced,

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This section deals specifically with a sentence of imprisonment and does not empower a court to order a sentence of a fine to operate retrospectively. See R v. ALSON MVUBU Review Case No.257/83 and THE QUEEN v. PATRICK MTHONTA Review Case NO.460/84.

If it was intended by the Magistrate that the order back-dating the sentence should only operate in the event of the accused being unable to raise all or a portion of the fine the order should have been framed as such.

The conviction and sentence are hereby confirmed. The order back dating the sentence is substituted by the following:-If the whole or any portion of the period of imprisonment has to be served as a result of the accused's inability to pay the fine, such period of imprisonment is to be with effect from the 30th December 1988.

B. DUNN

JUDGE