

IN THE HIGH COURT OF NAMIBIA

THE STATE

versus

MARIO THOMAS

(HIGH COURT REVIEW CASE NO. 124 5/96)

CORAM: FRANK, J. et ANGULA, A.J.

Delivered on: 1996.05.08

REVIEW JUDGMENT

ANGULA, A.J.: The accused pleaded guilty and was

convicted on his own plea for having contravened section 2 of Act 75 of 1969 in that he was in possession of a firearm, a Parabellum pistol, without a licence; contravention of section 36 of the same Act in that he was in possession of ammunition, 13 rounds of the said pistol, 1 round of AK 47 rifle and one round of a .22 rifle.

He pleaded not guilty to a further charge of contravention of section 39(1) (i) in that he pointed the aforesaid pistol to one Agnes Ruhepo. After evidence was led, and the accused himself testified, he was also convicted on this charge.

The accused then informed the Court about his personal circumstances namely that; he is 20 years old of age, single with 3 minor children, unemployed, and that he was not able to pay a fine.

The presiding magistrate sentenced him to a period of two (2) years imprisonment in respect of count 1 and four (4) months imprisonment in respect of count 2 and eight (8) months in respect of count 3.

The record has been forwarded to me for review in terms of section 306 of the Criminal Procedure Act of 1977 as amended. The magistrate sent a covering letter informing me that the accused told him that he (the accused) was unable to pay a fine and he (the magistrate) did accordingly not give him an option of fine. The magistrate further informed me that "in the afternoon", probably of the same day, after the accused had been sentenced, the parents of the accused approached him with a request to impose an option of fine. The magistrate said that had the accused told him that he was able to pay a fine he would have considered to impose an imprisonment period with an option to pay a fine. He accordingly requested me to consider granting an option of fine to the accused.

I must point out that I am satisfied that the proceedings in this matter took place in accordance with justice and no irregularity was committed by the presiding magistrate.

I have considered the personal circumstances of the accused, the interest of the society as well as the offence committed by the accused together with the magistrate's request. I am prepared to substitute the sentence imposed by the learned magistrate, with what I consider to be an appropriate sentence under the circumstances.

Accordingly the sentence is substituted with the following sentence:

Count 1 and 2: One (1) year imprisonment or a fine of
N\$1 000;

Count 3 : Six (6) months imprisonment suspended in
- whole for a period of two (2) years on
condition that the accused is not convicted
for contravention of section 39(1) (i) of Act
75 of 1969 as amended within the period of
suspension.

FRANK, JUDGE

A handwritten signature in black ink, appearing to be 'FRANK', written over a horizontal line.

ANGULA, ACTING JUDGE