

SIMON GANEV V THE STATE

CASE NO. CA 85/1998

1999/11/29 Gibson, J. et Maritz, J.

CRIMINAL PROCEDURE

Sections 305 and 309(4)(a) of CPA - Prisoner may not prosecute a review or appeal in person without judges' certificate -constitutionality of sections neither raised not attacked - appeal struck from the roll.

CASE NO. CA 85/98

IN THE HIGH COURT OF NAMIBIA

In the matter between:

SIMON GANEB

APPELLANT

versus

THE STATE

RESPONDENT

CORAM: GIBSON, J. et MARITZ, J.

Heard on: 1999.11.29

Delivered on: 1999.11.29 {ex tempore}

JUDGMENT:

MARITZ. J.: After having been convicted in the magistrate's court, Karibib of the crimes of defeating or obstructing the course of justice and of theft involving stock, the appellant was sentenced on the 3rd of October 1997 to twelve (12) months imprisonment wholly suspended for five (5) years on certain conditions and to three (3) years imprisonment respectively.

On 22 June 1998, more than 8 months after the date of his sentence, the appellant

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wrote a letter to the Registrar of the High Court in which he purported to file an

"appeal" against both his conviction and sentence. On 13 July 1998 he was advised by the Registrar to submit an application for leave to appeal and for condonation to the Magistrates' Court in Karibib. On the 31st of July 1998 the appellant wrote a letter to the Magistrates' Court applying for leave to appeal or for the case against him to be re-opened. He also requested a copy of the case record in that letter. A copy of the case record was also requested by his attorneys, Messrs A Davids and Co. on 3 August 1998. That request notwithstanding, his attorney did not file any notice of appeal in terms of Section 309 of the Criminal Procedure Act, 1977.

On 21 October 1998 the appellant addressed a further letter to "the Registrar of the High

Court and of the Supreme Court" in which he dealt with the evidence adduced against him. His application for leave to appeal, all the correspondence and the record of proceedings were thereafter submitted to two judges of this court for a certificate to prosecute the intended appeal. That certificate was refused on 26 October 1998 for the following reasons (and I quote):

"There are absolutely no prospects of success on appeal either against conviction or against sentence."

Shortly afterwards, the Registrar informed the appellant that his application had been declined. Since then the appellant has written numerous letters to the Judge President, the Attorney-General, the Registrar of the High Court and even to the Chief Justice, the contents whereof I do not need to deal with.

ON BEHALF OF THE APPLICANT

IN PERSON

ON BEHALF OF THE RESPONDENT

MS WELLMAN

Instructed by:

Prosecutor - General