

CASE NO.:/.....

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

Versus

IITA PAULUS

[HIGH COURT REVIEW CASE NO.: 163/07]

CORAM: PARKER, J *et* , AJ

Delivered on:

2007 January ...

REVIEW JUDGMENT

PARKER, J.:

[1] The accused person pleaded guilty to housebreaking with intent to steal and theft of N\$30.00. He was convicted and sentenced to three years' imprisonment of which one year was suspended for five years on condition that the accused is not convicted of housebreaking with intent to steal and theft, committed during the period of suspension.

[2] The conviction is in order, but the sentence is not. The sentence comes to me with a sense of great shock in that the accused person was sentenced to a term of three years' imprisonment for the theft of N\$30.00. In my view, the sentence is harsh in the extreme on any ground, considering the fact that the accused person pleaded guilty to the charge, he is a first offender and the amount stolen is N\$30.00.

[3] It must be borne in mind that imprisonment is not the only punishment which is appropriate for retributive and deterrent purposes. Imprisonment is only justified if it is necessary that the accused person be removed from society for the protection of the public.¹ The alternative is either a fine or suspended sentence. A suspended sentence has two beneficial effects: (1) it prevents the offender from going to gaol, and (2) the offender has the sentence hanging over him or her; if he behaves himself or herself, he will not serve the sentence; if he or she does not, he or she will serve it.²

[4] Having applied these principles to the present case, I come to the conclusion that the facts of this case do not justify removing the accused person from society. Thus, it is my respectful view that the sentence imposed by the learned magistrate is clearly not in accordance

¹ S v Scheepers 1977 (2) SA 154 (A) at 155A-B.

² Persadh v R 1944 NPD 357 at 358; S v Goroseb 1990 NR 308 at 309H-I.

with justice, and the accused person will be gravely prejudiced if the obtaining of a statement about the sentence from the learned magistrate is not dispensed with and the matter reviewed forthwith.

[5] It follows that the sentence the learned magistrate imposed cannot stand. In the result, I make the following orders:

- (1) The conviction of housebreaking with intent to steal and theft is confirmed.
- (2) The sentence is set aside and the following is put in its place:

Three month's imprisonment wholly suspended for five years on condition that the accused person is not found guilty of housebreaking with intent to steal and theft, committed during the period of suspension.

Parker, J

I agree.

Manyarara, AJ