

116/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

CHRISTIE OWOS-OAB

(HIGH COURT REVIEW CASE NO.: 1161/06)

CORAM: VAN NIEKERK, J et SILUNGWE, AJ

Delivered on: 2007-08-10

REVIEW JUDGMENT:

VAN NIEKERK, J:

[1] The accused in this matter was convicted on a charge of escaping from lawful custody from the Karibib police station holding cells. He was sentenced to 30 months imprisonment.

[2] On a review I initially had some misgivings about the conviction, but the magistrate's reasons are such that I am inclined to uphold the conviction.

[3] When I asked the learned magistrate for her reasons for sentence, she responded:

"3. The rationale behind the sentence imposed is because the accused had a previous conviction and furthermore, the offence is becoming quite prevalent in this district and the reasons frequently furnished by accuseds is that the Police refused to take them to receive medical attention or that the Police refused to take them to visit relatives.

The sentence was not only aimed at specific deterrence but also at general deterrence, to caution would be offenders."

[4] The accused is a 35 year old person with a previous conviction for stock theft for which he was sentenced to 18 months imprisonment during 2004. When he escaped from custody he was awaiting trial on allegations that he again stole stock. He pleaded guilty to the charge and stated that he escaped to go to the hospital or clinic. He said that he is a sick person and that the police refused to take him. The magistrate clearly did not believe this story. However, the State did not present any evidence to the contrary. There is therefore no basis on which the magistrate could just reject the accused's alleged reason. In my view she committed an irregularity which prejudiced the accused because it motivated her to impose a long sentence.

[5] Apart from this, the previous conviction on which the magistrate relies, has no bearing on the charge of escaping from lawful custody. In my view the sentence is unduly harsh in the circumstances of this case, leading one to the conclusion that the learned magistrate over emphasised the severity of the crime.

[6] I therefore make the following order.

1. The conviction is confirmed.
2. The sentence is substituted with the following sentence:
12 months imprisonment.
3. The sentence is backdated to 21 August 2006.

VAN NIEKERK, J

I agree

SILUNGWE, A J