

CASE NO.: CR 141/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

GERHARD TOROTIEB

[HIGH COURT REVIEW CASE NO.: 1025/07]

CORAM: , J et , AJ

Delivered on:

2007 September 25

REVIEW JUDGMENT

PARKER, J.:

[1] The accused was charged before the Gobabis Magistrate's Court for theft, which took into account the Stock Theft Act (Act 12 of 1990) (the Act), as amended by Act 19 of 2004. The accused pleaded not guilty. After hearing evidence, the learned Magistrate found the accused guilty as charged and sentenced him to four years' imprisonment.

[2] I have perused the record, and I am satisfied that the proceedings are in accordance with justice as far as the conviction is concerned. I asked the learned magistrate if he did not think the sentence was harsh considering the fact that the accused was a first offender and also that all the livestock were recovered alive. The learned magistrate agrees that taking into account these factors, the sentence he imposed was harsh.

[3] After perusing the evidence, I find that there are compelling and

exceptional circumstances making the sentence of direct imprisonment for four years harsh. In any case, the learned magistrate concedes that the sentence is harsh, as I have stated above.

[4] In the result, I make the following orders:

- (1) The conviction is confirmed.
- (2) The sentence is set aside and substituted with a sentence of two years' imprisonment, which is antedated to 5 January 2007.

Parker, J

I agree.

Manyarara, AJ