

CASE NO.: CR 50/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

WALTER HOESEB

[HIGH COURT REVIEW CASE NO.: 229/2010]

CORAM: NDAUENDAPO, J et SIBOLEKA, J

Delivered on: 2010 SEPTEMBER 24

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The 28 year old accused appeared before the District Magistrate Court at Outjo on the following counts: Extortion, Obstructing the Course of Justice, Fraud - alternatively Forgery and Uttering. He pleaded guilty to all three counts and after questioning in terms of section 112(l)(b) of Act 51/77 was convicted and sentenced as follows:

"Sentence: All counts taken together for purpose of sentence.
Three (3) years direct imprisonment."

When this matter came before me on review I directed the following query to the Magistrate:

- "1. Is the sentence of three (3) years not too severe.
2. Seeing that all three counts flow from one and the same conduct (transaction), why did you not consider suspending part of the three (3) years imprisonment or granting an option of a fine.
3. In addition to the above, what about the following personal circumstances of the accused:
 - He pleaded guilty;
 - Is a first offender and 28 years of age;
4. No payment was done to him (the accused), by the complainant
ie. there was no actual prejudice."

The reply thereto has since been received and it reads:

- "1. Although there was no actual prejudice, there was potential

prejudice.

2. In considering an appropriate sentence the one factor must not outweigh the other factors and the one factor must not over emphasized at the cost of the other. The court needs to strike a balance in all three factors:

(a) The crime(s) committed;

The interest of the Community;

(c) The Accused's personal circumstances. In this regard, see the case of *S v Somo* 1980(3) SA 143 (T).

The accused is convicted of very serious offences. He used the name of the Prosecutor General to commit his offence. He travelled all the way from Windhoek to commit this offence(s). It is clear in this matter that the offence(s) were pre-planned. In the reasons for sentence it was clearly outlined how the court arrived at the sentence and all factors were taken into account.

3.. I am respectfully with the view that granting an option of a fine will not be a deterrent factor in this matter. I concur with honourable Justice Siboleka that since all counts flow from the same transaction, part of the sentence should have been suspended. That would have been a more reasonable and efficient sentence."

The Magistrate has conceded that since all three counts flow from the same transaction part of the sentence should have been suspended.

In the result:

(a) The conviction is confirmed.

(b) The sentence is set aside and substituted with the following:

Accused is sentenced to a fine of N\$2000,00 or 12 (twelve)

months imprisonment plus a further 2 (two) years imprisonment wholly suspended for 5 (five) years on condition that the accused is not found guilty of Extortion, Obstructing the Course of Justice and Fraud, committed during the period of suspension.

The sentence is antedated to the 2nd of December 2009.

SIBOLEKA, J

I agree

NDAUENDAPO, J