



**CASE NO.: CR**

**57/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

**versus**

**HENDRIK THOMAS COLEMAN**

**[HIGH COURT REVIEW CASE NO.: 1180/2011]**

**CORAM: SWANEPOEL, J et SIBOLEKA, J**

**Delivered on: 2011 JULY 15**

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**REVIEW JUDGMENT**

**SIBOLEKA, J.:**

[1] The accused appeared before the Magistrate's Court at Mariental on a charge of escaping from lawful custody (common law).

[2] From the facts the police officer found him digging the hole

through which he wanted to escape. He was however convicted as follows:

“Court: Accused I had found guilty charged court satisfied that accused admits allegations in charge.”

[3] I queried the learned Magistrate why she returned a verdict of “guilty as charged” when from the facts it was only an attempt to escape. The Magistrate conceded the error and is agreeable that indeed only an attempt to escape had been established.

[4] The sentence is in order and will not be tampered with. However, the conviction cannot be allowed to stand.

[5] In the result I make the following order:

The conviction is set aside and substituted with the following:

Guilty of Attempt to escape from lawful custody.

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**SIBOLEKA, J**

I agree.

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**SWANEPOEL, J**