



CASE NO.: CR 86/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

JOSEF SKRYWER

(HIGH COURT REVIEW CASE NO.: 103/2010)

(MAGISTRATE'S SERIAL NO.: 157/2009)

CORAM: PARKER, J et SHIVUTE, J

Delivered on: 2011 September 22

REVIEW JUDGMENT

SHIVUTE, J: [1] The accused person appeared before Mariental Magistrate on a charge of housebreaking with intent to steal and theft. He

pleaded guilty to the charge and he was convicted as charged and sentenced to 12 months' imprisonment.

[2] I queried the magistrate in the following terms:

"How did the court satisfy itself that the accused had an intention to steal at the time he broke into the house?"

[3] The learned magistrate responded as follows:

"After perusing the record the magistrate concedes that the element of the intention to commit a crime at the time the accused broke into the house was not established through questioning by the presiding officer.

I will leave the matter to the discretion of the Honourable reviewing judge of this Honourable Court."

[4] The accused person was not properly convicted on the charge of housebreaking with intent to steal and theft. The learned magistrate never questioned the accused pertaining to his intention at the time he entered the premises. The intention of the accused at the time he broke into the premises is an essential element and it must be established. In view of this the conviction cannot be allowed to stand. It also follows that the sentence is set aside.

[5] I found it unnecessary to remit the matter back to the magistrate for questioning in terms of section 112 1 (b) Act 51/77 since the accused has served half of the sentence.

[6] In the result, the following order is made:

The conviction and sentence are set aside.

SHIVUTE, J

I agree

PARKER, J