



**CASE NO.: CR 3/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**ANTONIO AGOSTINHO**

(HIGH COURT REVIEW CASE NO.: 91/2011)

**CORAM: MULLER, J et SIMPSON, AJ**

Delivered on: 26 January 2011

**REVIEW JUDGMENT**

**SIMPSON, AJ.:** [1] The accused appeared in the Ondangwa District Court on one count of assault by threat and one count on assault read with S 21 of Act 4/03, and pleaded guilty to both counts.

[2] On count 1 the Magistrate applied S 112 (1)(b) of the CPA and on count 2, S 112 (1)(a) was applied. On count 1 the accused was sentenced to four (4) months imprisonment, whereby on count 2, the accused was sentenced to two (2) months imprisonment *in toto* suspended on the usual conditions.

[3] The issue that arises here concerns the jurisdiction of a court where S 112 (1)(a) of the CPA apply. When this section is applied, the court must impose sentence with an option of a fine. A sentence of imprisonment without an option of a fine and *in toto* suspended, cannot be imposed where the court applied S 112 (1)(a) of the CPA.

[4] The conviction by the Magistrate of Ondangwa, is therefore confirmed but the sentence on count 2 is set aside and replaced with the following:

*Two hundred Namibian Dollars (N\$200.00) or two (2) months imprisonment in toto suspended for three (3) years on condition that accused is not convicted of assault, read with S 21 of Act 4/03 committed during the period of suspension.*

**SIMPSON, AJ**

**I agree**

**MULLER, J**