



REPUBLIC OF NAMIBIA

CASE NO.: CR 7/2012

IN THE HIGH COURT OF NAMIBIA

In the matter between:

STATE

versus

JOSE ANDREW

(HIGH COURT REVIEW CASE NO.: 114/2012)

CORAM: VAN NIEKERK, J et MILLER, AJ

Delivered on: 26 January 2012

REVIEW JUDGMENT

VAN NIEKERK, J: [1] The accused was convicted after a plea of guilty by the magistrate at Rundu on a charge of contravening section 2(b) of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971), in that he was in possession of 843g cannabis to the value of N\$2 625-00. The magistrate sentenced the accused to a fine of

N\$10 000 or alternative imprisonment of 13 months. The conviction is in order.

[2] The accused is a 31 year old first offender who is self employed as a tailor and earns between N\$2 000 and N\$5 000 per month. He is in a long term relationship and has a 1 year old child. At the time sentence was passed he had only N\$800 available for a fine. The learned magistrate properly took all these factors into consideration as well as the fact that the accused showed some remorse by pleading guilty and that he spent one month in custody awaiting trial. The magistrate further took into account the prevalence of the offence in the district and nationwide; the social evils associated with such crimes; the duty of the courts to assist the other law enforcement agencies in combating this type of offence; and the duty of the court to impose a punishment that fits the accused and the offence and the interests of society.

[3] I really cannot point to any misdirection on the part of the magistrate. The problem is that the sentence imposed creates a sense of shock, especially when compared to other sentences the learned magistrate passed in cases dealing with the same offence, which cases were confirmed on review at the same time that this case is considered. When the sentence is compared to that which this Court would have imposed had it been sitting as a court of first instance, the difference is so striking that there is an indication that the magistrate did not properly exercise his discretion when passing sentence.

[4] The result is that the conviction is confirmed, but the sentence is set aside and replaced with a sentence of N\$6 000 (Six thousand Namibia Dollars) or 6 (six) months imprisonment.

VAN NIEKERK, J

I agree.

MILLER, AJ