



CASE NO.: CR 11/2012

NOT REPORTABLE

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**MCARTNEY GARISEB**

**HIGH COURT REVIEW CASE NO.: 1887/2011**

**CORAM:** HOFF, J *et* MILLER, AJ

Delivered on: 21 February 2012

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**REVIEW JUDGMENT**

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**HOFF, J:** [1] The accused was convicted in the magistrate court of the crime of housebreaking with intent to steal and theft and sentenced as follows:

“12 months imprisonment of which 6 months is suspended for 5 years on condition accused is not convicted of housebreaking and theft committed within the period of suspension.”

[2] I directed a query at the magistrate to explain what was meant by “housebreaking and theft”. When the record was returned I was informed that the magistrate is no longer employed by the Ministry of Justice.

[3] There is no such crime as “housebreaking and theft” and the condition of suspension needs to be rectified.

[4] The conviction is confirmed but the sentence is amended to read as follows:

24 months imprisonment of which 6 months imprisonment are suspended for a period of 5 years on condition accused is not convicted of the crime of housebreaking with intent to steal and theft committed during the period of suspension.

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**HOFF, J**

I agree

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**MILLER, AJ**