



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

Case no: CR 8/2013

**THE STATE**

Versus

**VILHO VREDE**

**ACCUSED 1**

**MICHAEL KAURUGAB**

**ACCUSED 2**

**HIGH COURT MAIN DIVISION REF. NO 772/2012**

**Neutral citation:** *The State v Vrede* (CR 8/2013) [2013] NAHCMD 34 (12 February 2013)

**Coram:** SHIVUTE, J *et* PARKER, AJ

**Delivered:** 12 February 2013

**Flynote:** Two accused persons charged with robbery - Accused 1 was convicted of theft whilst accused 2 was convicted of contravening section 7 of Ordinance 12 of 1956. The review sheet indicates that both were convicted of robbery. The review sheet should reflect the correct verdict on which the accused was convicted of. The magistrate should proofread the record before he signs it to certify the proceedings.

**Summary:** If more than one accused person is being sentenced, the sentence should be clear. It is confusing to impose the following sentence 8 months' imprisonment wholly suspended for 5 years on certain conditions. It is not clear

whether the sentence was imposed in respect of one accused person or in respect of both.

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### **ORDER**

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In the result the following order is made:

1. The conviction of robbery indicated on the review sheet in respect of both accused is set aside and substituted with the following:

Accused 1: Guilty of theft.

Accused 2: Guilty of contravening section 7 of Ordinance 12 of 1956.

2. The sentence of 8 months' imprisonment wholly suspended for 5 years on certain conditions reflected on the review sheet is set aside and substituted by the following:

Each accused is sentenced to 8 months' imprisonment wholly suspended for 5 years on condition accused is not convicted of attempted theft or theft or robbery committed during the period of suspension.

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### **REVIEW JUDGMENT**

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SHIVUTE J (PARKER, A J concurring):

- [1] This matter was placed before me by way of automatic review.

[2] Having considered the record I directed the following query to the learned magistrate.

“1. It appears two accused persons were convicted, however the sentence reads: “8 months’ imprisonment which is wholly suspended for 5 years on condition accused is not found guilty of attempted theft or theft or robbery committed during the period of suspension.” In respect of which accused is the sentence imposed?”

2. The magistrate should reflect the names of both accused persons on the review sheet. It is not proper to write “Vilho Vrede and Another”.

[3] The learned magistrate responded to the query as follows:

“Accused 1 and 3 were found guilty of theft and section 7 of Ordinance 12 of 1956 respectively. Each was sentenced to the above mentioned sentence. I agree that the record is confusing as the words “each is sentenced to” was not used on the review cover as well as the sentence annexure A1 in. This was an omission on my side. However, the NAMCIS record is correct, (see last page of record dated 17 February 2012. It indicates my intention with the sentences imposed on accused 1 and 3.” “With regard to point 2 above I submit that as the space on the review cover is minimal for the names of the accused to be entered fully only the first accused is mentioned.”

[4] If more than one accused is being sentenced it should be clearly indicated on the J15 and on the review sheet. It is confusing to impose a sentence like the one imposed in this matter namely: Eight (8) months’ imprisonment wholly suspended for 5 years on certain conditions. It is not clear whether the sentence was imposed in respect of one accused person or in respect of both.

[5] Again the accused person were charged with the offence of robbery, however accused no. 1 was convicted of the offence of theft and accused no. 2 was convicted of contravening section 7 of Ordinance 12 of 1956 but the review sheet reflects that both accused persons were convicted of robbery. It is very important for the

magistrate to proofread the record before he puts his signature on the record of proceedings, certifying the proceedings to be correct.

[6] Furthermore it is very important to reflect the names of both accused persons on the review sheet because if the accused persons are serving a term of imprisonment the review sheet will have to be sent to the prison officials after review. The prison authority will not be in a position to know who “another” is.

[7] In the result the following order is made:

1. The conviction of robbery indicated on the review sheet in respect of both accused is set aside and substituted with the following:

Accused 1: Guilty of theft.

Accused 2: Guilty of contravening section 7 of Ordinance 12 of 1956.

2. The sentence of 8 months' imprisonment wholly suspended for 5 years on certain conditions reflected on the review sheet is set aside and substituted by the following:

Each accused is sentenced to 8 months' imprisonment wholly suspended for 5 years on condition accused is not convicted of attempted theft or theft or robbery committed during the period of suspension.

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N N Shivute  
Judge

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C Parker  
Acting Judge

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