

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 85/2013

NOT REPORTABLE

In the matter between:

THE STATE

and

KATRINA GAESES

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1670/2013)

Neutral citation; S 1/ Gaeses (CR 85/2013) [2014] NAHCMD 3(16 January 2014)

Coram: HOFF J and UEITELE J **Delivered: 16 January 2014**

- (a) The convictions are confirmed.
- (b) The sentence is set aside and amended to read as follows:
The two counts are taken together for purpose of sentence and the accused is sentenced as follows:

ORDER

24 months imprisonment of which six months imprisonment are suspended for a period of three years on condition the accused is not convicted of the crime of kidnapping or the crime of assault with intent to do grievous bodily harm committed during the period of suspension.

JUDGMENT

HOFF J (UEITELE J concurring):

[1] The accused was convicted of the crimes of kidnapping and assault with intent to do grievous bodily harm. These two counts were taken together for purpose of sentence and the following sentence was imposed:

Twenty four (24) months imprisonment of which six (6) months imprisonment is suspended for three (3) years on condition that the accused is not convicted of the crimes (1) Kidnapping *and* (2) Assault with intent to do grievous bodily harm committed during the period of suspension.'

(Emphasis provided).

I directed a query to the presiding magistrate wanting to know whether his intention in formulating the suspended sentence was that only in the instance where the accused is convicted of the crime of kidnapping as well as the crime of assault

with intent to do grievous bodily harm would there be non-compliance with the condition of sentence.

[2] The magistrate replied that his intention was that there would be non-compliance with the condition of suspension when either the crime of kidnapping or the crime of assault with intent to do grievous bodily harm had been committed and proposed that the sentence be reformulated accordingly and in addition to include 'any violent act against another person'.

[3] I agree that the sentence be reformulated but not to the extent that the addition suggested should be included, since to do so would bring an element of vagueness into the sentence, which may for example include the crime of rape.

[4] In the result the following orders made:

(a) The convictions are confirmed.

(b) The sentence is set aside and amended to read as follows:

The two counts are taken together for purpose of sentence and the accused is sentenced as follows:

24 months imprisonment of which six months imprisonment are suspended for a period of three years on condition the accused is not convicted of the crime of kidnapping or the crime of assault with intent to do grievous bodily harm committed during the period of suspension.E

P B HOFF Judge

S UEITELE Judge