



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 46/2016

In the matter between:

THE STATE

And

BENNY DAVID ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 893/2016)

Neutral citation: S v David (CR 46-2016) [2016] NAHCMD 207 (18 July 2016)

Coram: SIBOLEKA J and USIKU J

Delivered: 18 July 2016

Flynote: Criminal Procedure- suspended sentence- conditions of correct wording of condition of sentence- the word committed should form part of the condition.

Summary: The accused person was sentenced to 12 months imprisonment wholly suspended for a period of two years on condition accused is not convicted of the offence of theft. I directed a query to the magistrate to explain why the word Committed was omitted in the phrasing of the sentence imposed. Magistrate stated that it was a mere oversight. The sentence is

confirmed and phrasing of the sentence was substituted to include the word Committed.

ORDER

a) That the conviction is confirmed.

b) That the sentence is set aside and substituted with the following:

12 months imprisonment wholly suspended for a period of two years on condition accused is not convicted of the offence of theft committed during the period of suspension.

REVIEW JUDGMENT

USIKU J, (SIBOLEKA J concurring)

[1] This matter was submitted to this court for review in terms of s 302 (1) of the Criminal Procedure Act by the magistrate of Katima Mulilo.

[2] Accused appeared in the magistrates court of Katima Mulilo on a single count of theft, of a telephonic Samsung (white) mobile valued at N\$10 000. The accused appeared in person and pleaded guilty to the charge in term of section 112(1) (b) of the criminal procedure act 51 of 1977. The learned magistrate proceeded to sentence the accused to 12 months imprisonment wholly suspended for a period of two years on condition accused is not convicted of the offence of theft.

[3] The following query was directed to the magistrate:

“Can the magistrate explain as to why the manner in which the sentence is framed, the correct wording of suspension is not included, should the word “committed” not be part of the condition?”

[4] The learned magistrate responded as follows:

“The word “committed” should have been part of the condition. The word “committed” was an oversight”

[5] As a result I make the following orders:

a) The conviction is confirmed.

b) The sentence is set aside and substituted with the following:

12 months imprisonment wholly suspended for a period of two years on condition accused is not convicted of the offence of theft committed during the period of suspension.

D N USIKU

Judge

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A SIBOLEKA

Judge