

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case no: CR 5/2016

In the matter between:

THE STATE

And

CHARLIE BOOYSEN

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 1846/2015)
(MAGISTRATE SERIAL NO. 87/2015)

Neutral citation: *State v Booysen* (CR 5/2016) [2016] NAHCMD 26 (15 February 2016)

Coram: SIBOLEKA J AND USIKU J

Delivered: 15 February 2016

Flynote: Criminal law: A Magistrate Court is allowed to send a case for review in order to have a mistake in the sentence it has imposed corrected accordingly.

Summary: This is a Housebreaking with intent to steal and Theft matter. The first count was committed on 31 March 2015, the second on 07 July 2015. The two sentences were ordered to run concurrently.

Held: The crimes were not committed at the same time. Order of concurrent running of such sentence not allowed.

ORDER

In the result I make the following order:

The trial Magistrate's sentence is replaced with the following:

Count 1: Three (3) months imprisonment.

Count 2: Six (6) months imprisonment.

The sentence is antedated 09 November 2015.

REVIEW JUDGMENT

SIBOLEKA J (USIKU J concurring):

[1] The accused appeared in the Magistrate's Court, Karasburg on two counts of Housebreaking with intent to steal and theft.

[2] He pleaded guilty and after questioning in terms of section 112(1)(b) of Act 51 of 1977 he was convicted and sentenced as follows:

“Count 1: 3 months (three) imprisonment without an option of a fine.

Count 2: 6 months (six) imprisonment without an option of a fine. These two sentences run concurrently.”

[3] On the review covering letter the Magistrate states the following:

“The Honourable Reviewing Judge I kindly bring the following to the attention of the Reviewing Judge. I convicted the accused Charlie Booyesen on two counts of Housebreaking with intent to steal and theft.

I sentenced the accused to: ...; I further added that the two sentences should run

concurrently. I read the cases *S v Kido* 2014(3) NR 697 (HC) and *S v Shikundule* 2008(1) NR 344 (HC) and came to the understanding that the order I gave concerning concurrent sentencing was incorrect as the two incidences of housebreaking did not occur at the same time, thus evidencing separate intentions. I therefore ask the Honourable Reviewing Judge to cancel my order that the two sentences should run concurrently.”

[4] The trial Court correctly reflected on its mistake as stated in the case of *S v Kido* 2014(3) NR 697 where it was held that the concurrent running of sentences should be preferred in instances where the crimes were committed at the same time. In this matter the first Housebreaking was on 31 March 2015 and the second was 7 July 2015.

[5] In the result I make the following order:

The trial Magistrate's sentence is replaced with the following:

Count 1: Three (3) months imprisonment.

Count 2: Six (6) months imprisonment.

It is ordered that the sentence should run consecutively.

The sentence is antedated 09 November 2015.

A M SIBOLEKA
Judge

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D N USIKU
Judge