

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case No: CR 10/2017

THE STATE

versus

ELRICO WITBOOI

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1138/2016)
(MAGISTRATE'S SERIAL NO. 32/2016)

Neutral citation: *S v Witbooi* (CR 10/2017) [2017] NAHCMD 16
(30 January 2017)

Coram: LIEBENBERG J and SHIVUTE J

Delivered: 30 January 2017

ORDER

- a) The conviction is confirmed.
 - b) The sentence is set aside and replaced with the following:
Eight (8) months' imprisonment of which five (5) months are suspended for (4) years on condition that the accused is not convicted of the crime of theft committed during the period of suspension.
 - c) The sentence is antedated to 7 July 2016.
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REVIEW JUDGMENT

SHIVUTE J (LIEBENBERG J concurring):

[1] The accused was convicted of theft and sentenced to 8 (eight) months direct imprisonment of which 5 (five) months are suspended for 4 (four) years on the condition that the accused is not committed of theft during the period of suspension.

[2] I directed the following query:

'1. The accused person was convicted of theft and sentenced as follows:

“Eight (8) months direct imprisonment of which 5 (five) months are suspended for four (4) years on the condition that the accused is not committed of theft during the period of suspension.”

2. The sentence imposed is it not too vague?’

[3] The learned magistrate replied:

1. I concede that the sentence imposed is vague and if I may be allowed to add, embarrassing.
2. Humbly apologise for the wrong wording of the condition.
3. Pray to the Honourable Judge to amend the sentence and have it read as follows:

'Eight (8) months imprisonment of which five (5) months are suspended for a period of four (4) years on the condition that the accused is not convicted of the crime of theft committed during the period of suspension.'

[4] The conviction is in order. However, as the learned magistrate rightly conceded, the formulation of the sentence is unclear. For the suspended sentence to be put into operation, the accused has to be convicted of an offence committed during the period of suspension. Therefore, the sentence imposed is vague and it cannot be allowed to stand.

[5] As I have no further issues pertaining to this matter, the following order is made:

- a) The conviction is confirmed
- b) The sentence is set aside and replaced with the following:

Eight (8) months imprisonment of which five (5) months are suspended for a period of four (4) years on the condition that the accused is not convicted of the crime of theft committed during the period of suspension.

- d) The sentence is antedated to 7 July 2016.

N N Shivute

Judge

JC Liebenberg

Judge