



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no.: CR 52/2017

THE STATE

versus

SHALIMAR SHALIEN BEZUIDENHOUT

(HIGH COURT MAIN DIVISION REVIEW REF NO 1439/2016)

Neutral citation: *S v Bezuidenhout* (CR 52/2017) [2017] NAHCMD 226 (16 August 2017)

Coram: LIEBENBERG J et SHIVUTE J

Delivered: 16 August 2017

ORDER

- a) The conviction on count 1 is confirmed
- b) The sentence is amended to read as follows:
'24 (twenty four) month's imprisonment of which 12 months are suspended for 5 (five) years on condition the accused is not convicted of dealing in

dependence producing substance contravening s 2(a) Act 41 of 1971 or possession of dependence producing substance contravening s 2(1) (b) of the same Act committed during the period of suspension. The sentence is backdated to 31 August 2016.'

REVIEW JUDGMENT

SHIVUTE J, (LIEBENBERG J CONCURRING)

[1] The accused was convicted of dealing in dependence producing substance contravening s 2 (a) of Act 41 of 1971. He was sentenced to 24 months' imprisonment of which 12 months' are suspended for a period of 5 years on condition that the accused is not convicted of any drug related offence.

[2] I queried the learned magistrate whether the sentence is not too vague. The magistrate conceded that the sentence is too vague and requested the reviewing judge to amend it to read as follows:

'Accused sentenced to 24 (twenty four) months' imprisonment of which 12 months are suspended for a period of 5 (five) years on condition that the accused is not convicted of any drug related offences committed during the period of suspension.'

[3] The learned magistrate rightly conceded. However, the condition of suspension of the sentence she suggested is again too vague in the sense that the accused should not be convicted of any drug related offence.

[4] The condition of sentence must be clear and the accused should know exactly what conduct may lead him to serve the sentence should he breach the condition.

[5] Where the condition is related to the prevention of further criminal conduct by the accused, it must be clearly and precisely framed that a conviction of a particular offence which is related to the offence committed within the period of suspension will break the condition.

[6] The sentence imposed by the learned magistrate cannot be allowed to stand because of its vagueness and it lacks particularity.

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

- a) The conviction on count 1 is confirmed
- b) The sentence is amended to read as follows:

“24 (twenty four) month’s imprisonment of which 12 months are suspended for 5 (five) years on condition the accused is not convicted of dealing in dependence producing substance contravening s 2(a) Act 41 of 1971 or possession of dependence producing substance contravening s 2(1) (b) of the same Act committed during the period of suspension. The sentence is backdated to 31 August 2016.”

NN SHIVUTE
Judge

JC LIEBENBERG
Judge