



**HIGH COURT OF NAMIBIA, MAIN DIVISION  
JUDGMENT**

**CR No: 69/2017**

In the matter between

**THE STATE**

and

**HUBERT MAXIMILLIAN FARMER**

**HIGH COURT MD REVIEW CASE NO 1620/2017**

*Neutral citation: S v Farmer (CR 69/2017) [2017] NAHCMD 352 (06 December 2017)*

**Coram: LIEBENBERG J et SHIVUTE J**

**Delivered: 06 December 2017**

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## ORDER

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1. The conviction and sentence are set aside.
2. The matter is remitted to the court *a quo* in terms of s 312(1) of Act 51 of 1977 and the magistrate is directed to comply with the provisions of s 112(1)(b) as set out in the judgment.
3. In the event of a conviction the court, in sentencing, must have regard to that part of the sentence already served.

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## JUDGMENT

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LIEBENBERG J: (Concurring SHIVUTE J)

[1] The accused appeared in the Luderitz Magistrate's Court on a charge of contravening s 2(a) of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, for dealing in 72,7 grams of cannabis. He was convicted on his plea of guilty and sentenced to 18 months' imprisonment, partly suspended.

[2] On review a query was directed to the magistrate in which was pointed out that the court, during its questioning of the accused in terms of s 112(1)(b) of the Criminal Procedure Act 51 of 1977, omitted to establish whether the accused admits having dealt in the quantity of cannabis stated in the charge. In response the magistrate concedes that it has been an oversight and that the court, as a result thereof, should not have been satisfied that the elements of the offence charged had been admitted, when convicting. The concession is properly made.

[3] When questioning an accused who pleads guilty, the court acts in pursuance of s 112(1)(b) and has to establish both the factual and legal bases for such plea, and whether the guilty plea satisfies all the requirements. Though the quantity of cannabis dealt in is not *per se* an element of the offence charged, it is an allegation (particular) of the charge which, if established, will be likely to have an effect on the punishment meted out.

[4] In sentencing, the court took into account the quantity of the substance involved as well as the street value attached thereto, based on figures alleged in the charge but which had not been admitted by the accused. Without the court first establishing the correctness of the allegations levelled against the accused and him admitting same, the court misdirected itself by convicting the accused as charged. The conviction is therefore not in accordance with justice and falls to be set aside.

[5] In the result, it is ordered:

1. The conviction and sentence are set aside.
2. The matter is remitted to the court *a quo* in terms of s 312(1) of Act 51 of 1977 and the magistrate is directed to comply with the provisions of s 112(1)(b) as set out in the judgment.
3. In the event of a conviction the court, in sentencing, must have regard to that part of the sentence already served.

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**J C LIEBENBERG**

**JUDGE**

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**N N SHIVUTE**  
**JUDGE**