

Case Title: <i>The State v Getrud Nguvauva</i>	Case No: CR 02/2019
High Court MD Review No: 1283/2018	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Ms Justice N N Shivute	Delivered on: 23 January 2019
Neutral citation: <i>S v Nguvauva</i> (CR 02/2019) [2019] NAHCMD 02/2019 (23 January 2019)	
The order: <ol style="list-style-type: none"> a) The words 'Potentially dangerous dependence producing drugs' in the charge are substituted with the words 'Dangerous dependence producing drugs'. b) The conviction on the alternative to count 1 is confirmed. c) The sentences imposed on the 1st alternatives to count 1 and 2 are confirmed. 	
Reasons for order:	
LIEBENBERG J (concurring SHIVUTE J) <ol style="list-style-type: none"> 1. The accused was charged under the Abuse of Dependence Producing Substances and Rehabilitation Centres Act 41 of 1971 (the Act) in the magistrate's court for the district of Gobabis for two counts. 2. In respect of count 1 she was in the main count charged with the offence of dealing in a prohibited dependence substance (c/s 2(a)), alternatively, being in possession of a prohibited dependence substance (c/s 2(b)), to wit, cannabis. In count 2 the accused was charged with dealing in a dangerous dependence producing substance (c/s 2(c)), to wit, methaqualone, in the alternative for being in possession of a dangerous dependence substance (c/s 2(d)). 3. The accused was convicted on both alternative counts. The conviction in respect of count 1 is in order and will be confirmed. 	

4. The gravamen of this review is that the accused, in respect of the alternative to count 2, was convicted in terms of section 2 (d) for being in possession of a dangerous dependence-producing substance, while the heading and particulars of the charge reads that she contravened section 3 (a) and (b) of the Act which deals with *potentially* dangerous producing substances, a separate offence in itself.
5. A query was dispatched to the trial magistrate to explain the inconsistency. The magistrate conceded her error but mentioned that an amendment of the charge would not prejudice the accused.
6. The court in *S v Nguvauva* (CR 65/2018) [2018] NAHCMD 257 (23 August 2018) was faced with a similar issue. In that case the accused was convicted for contravening s 2(b) for being in possession of a prohibited dependence-producing substance, whilst the charge read that the accused contravened s 2 (c) or (d), in that she was dealing in or alternatively in possession of a dangerous dependence producing substance.
7. In *Nguvauva* it was held that, despite the shortcomings in the charge, the court was satisfied that the accused had duly been informed of the charge and was not prejudiced. Because the present circumstances are identical, this court repeats the same sentiments expressed in the above cited case.
8. We are therefore satisfied that it would not be prejudicial to the accused if the charge is amended to reflect the correct offence the accused was charged with and convicted of.
9. In the result, it is ordered:
 - a) The words 'Potentially dangerous dependence producing drugs' in the charge are substituted with the words 'Dangerous dependence producing drugs'.
 - b) The conviction on the alternative to count 1 is confirmed.
 - c) The sentences imposed on the 1st alternatives to count 1 and 2 are confirmed.



J C LIEBENBERG

JUDGE



N N SHIVUTE

JUDGE