

Case Title: <i>The State v Salmon David Isaaks</i>	Case No: CR 102/2019
High Court MD Review No: 1726/2019	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Mr Justice Sibeya (Acting)	Delivered on: 12 December 2019
Neutral citation: <i>S v Isaaks</i> (CR 102/2019) [2019] NAHCMD 554 (12 December 2019)	
The order: <ol style="list-style-type: none"> The conviction and sentence is set aside. The matter is remitted to the trial court in terms of section 312 of Act 51 of 1977 (CPA) with the direction to further question the accused in terms of section 112(1)(b) of the CPA and in particular to ascertain whether the accused admits to possession of the prohibited dependence-producing substance called Methaqualone, alternatively to enter a plea of not guilty in terms of section 113 of the CPA. In the event of the accused being convicted the court in sentencing must have regard to any period already served by the accused. 	
Reasons for order: LIEBENBERG J (concurring SIBEYA, AJ) <ol style="list-style-type: none"> This is a review in terms of s 302 (1) of the Criminal Procedure Act (the CPA) as amended. The accused was charged with possession of potentially dangerous dependence-producing drugs in contravention of section 2(b) r/w 1, 2(i), 7, 8, 10, 14 and Part I of the Schedule of Act 41 of 1971, as amended to wit, 7 tablets containing methaqualone. Following the accused's plea of guilty the court questioned the accused in terms of section 112(1)(b) of the CPA and having been satisfied that he had admitted to all elements of the offence, convicted and sentenced the accused to imprisonment of 12 months, alternatively to a fine of N\$ 2 000. 	

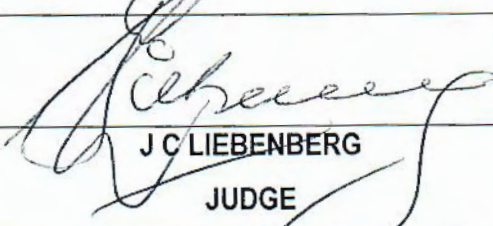
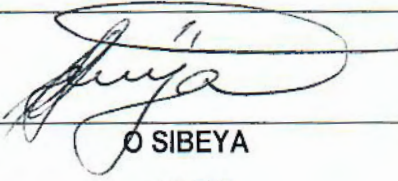
4. During the court's questioning the accused admitted that he was buying 'Mandrex' which according to him is a prohibited substance. This satisfied the court that the accused admitted to all the allegations set out in the charge.
5. On review, a query was sent to the magistrate to explain as to what satisfied her that the 'Mandrex' tablets found in possession of the accused is a dependence-producing substance. The magistrate's reply was that it was an oversight on her part as she did not attach the lab results which indicated that the tablets contained methaqualone.
6. Section 2 of Act 41 of 1941 prohibits any dealing in, use or possession of prohibited or dangerous dependence –producing drugs, i.e containing methaqualone, as reflected in Part I of the Schedule.
7. In *S v Maniping* and *S v Thwala*¹, it is held that it is wrong to charge a person with dealing in or possession of Mandrax without referring to methaqualone being the prohibited substance contained in tablets generally referred to as Mandrax. However, in the instant case, the accused was correctly charged.
8. The error committed by the magistrate was that she failed to question the accused as regards to whether the tablets in question contained methaqualone. This error is fatal as was illustrated by this court in *Marukus v S*² where the court set aside the conviction on account of the magistrate's failure to ascertain from the accused whether 'Mandrax' tablets the accused was found in possession of contained methaqualone.
9. In view of the above, it would be fair and in the interest of justice to remit the matter to the magistrate to question the accused in terms of s 112(1)(b) of the CPA in order to establish whether he admits to the tablets containing methaqualone.

¹ 1994 NR 69.

² HC-MD-CRI-APP-CAL 2019/00036 [2019] NAHCMD 419 (18 October 2019).

10. In the results, the following order is made:

- a) The conviction and sentence is set aside.
- b) The matter is remitted to the trial court in terms of section 312 of Act 51 of 1977 (CPA) with the direction to further question the accused in terms of section 112(1)(b) of the CPA and in particular to ascertain whether the accused admits to possession of the prohibited dependence-producing substance called Methaqualone, alternatively to enter a plea of not guilty in terms of section 113 of the CPA.
- c) In the event of the accused being convicted the court in sentencing must have regard to any period already served by the accused.

	
J C LIEBENBERG JUDGE	O SIBEYA JUDGE