

Case Title: <i>The State v Jackfres Isaak and ...?others</i>	Case No: CR 7/2020
High Court MD Review No: 2169/2019	Division of Court: Main Division
Heard before: Ms Justice C Claasen J <i>et</i> Ms Justice E Rakow AJ	Delivered on: 05 February 2020
Neutral citation: <i>S v Jackfres Isaak</i> (CR 7/2020) [2020] NAHCMD 37 (05 February 2020)	
The order: <p>(a) The convictions in respect of accused 1, accused 2, accused 3 and accused 4 are in order.</p> <p>(b) The sentence in respect if accused 1, accused 3 and accused 4 is set aside.</p> <p>(c) The matter is remitted to the trial court in terms of section 312 of Act 51 of 1977 with the direction that the magistrate conduct the procedures that precede sentence and impose sentence on accused 1, accused 3 and accused 4.</p>	
Reasons for order:	
Claasen J (Rakow concurring) <ol style="list-style-type: none"> 1. This is a review matter in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 (the CPA) as amended, (hereinafter referred to as the CPA.) 2. The accused persons were charged with charged with hunting of huntable game in that they contravened section 30(1)(a) read with sections 1,30(1)(b),30 (1)(c), 85, 89 and 89A of Ordinance 4of 1975 as amended and further read with sections 90 and 250 of the CPA. In the alternative, the accused persons were charged with possession of game meat in that they contravened section 51 read with section 85, section 87, and 89 of the Nature Conservation Ordinance as amended. 3. Accused 2 was legally represented during the plea and sentencing stages whereas accused 1, 	

accused 3 and accused 4 were appearing in person.

4. The accused persons pleaded guilty to the main charge and was correctly convicted on the main charge and sentence was imposed.
5. The magistrate has annexed a letter to the record wherein he states that he erroneously omitted to explain rights in mitigation to the three undefended accused and request further instructions from the reviewing judge. The magistrate is correct in his concession that the sentencing procedures are not in order.
6. Section 274 of the Criminal Procedure Act, as amended provides:

‘(1) A court may, before passing sentence, receive such evidence as it think fir in order to inform itself as to the proper sentence to be passed.
(2) The accused may address the court on any evidence received under subsection (1), as well as on matters of the sentence, and thereafter the prosecution may likewise address the court.”
7. A presiding officer is obliged to explain the pre-sentencing procedures to an undefended accused for him or her to understand the different options and place relevant information before the court.¹ At this stage an accused may choose to:
 - a) testify under oath in which case the prosecutor may cross-examine him or her; and or
 - b) call witnesses to give testimony on his/her behalf; and or
 - c) present evidence that he/she regard as relevant; and or
 - d) address the court.
8. The omission by the magistrate to explain the rights available in mitigation of sentence amounts to an irregularity that goes to the root of justice.
9. The convictions of all four accused are in order and left intact. Accused 2 was legally represented during the proceedings and his sentence will not be interfered with.

¹ See S v Masango 2017 (1) SACR 571 (GP)

10. The sentence imposed on accused 1, accused 3 and accused 4 cannot stand in the circumstances. It is set aside with a direction for the magistrate to impose sentence afresh along the guidance set out herein. In sentencing the magistrate must have regard to the imprisonment already served.

11. In the result, it is ordered that:

- a) The convictions in respect of accused 1, accused 2, accused 3 and accused 4 are in order.
- b) The sentence in respect of accused 1, accused 3 and accused 4 is set aside.
- c) The matter is remitted to the trial court in terms of section 312 of Act 51 of 1977 with the direction that the magistrate conduct the procedures that precede sentence and impose sentence on accused 1, accused 3 and accused 4.

C CLAASEN
JUDGE

E RAKOW
ACTING JUDGE