

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT

Case no: CR 108/2019

In the matter between:

THE STATE

and

JOHANNES FREDERICK

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 1751/2019)

(MAGISTRATE SERIAL NO. 44/2019)

Neutral citation: *S v Frederick* (CR 108/2019) [2019] NAHCMD 4 (20 January 2020)

Coram: MILLER AJ AND PARKER AJ

Delivered: 20 January 2020

Flynote: Criminal law – Accused was convicted of the crime of assault read with the provisions of the Domestic Violence Act, Act 4 of 2003 - Section 297 of the Criminal Procedure Act, Act 51 of 1977 provides that a sentence imposed may be suspended in whole or in part for a period not exceeding five years.

Summary: The accused was convicted of the crime of assault read with the provisions of the Domestic Violence Act, Act 4 of 2003. Accused admitted to two previous conviction of similar offence.

Held: The sentence imposed is deficient in some respects, and is not in accordance with the law and for that reason, stands to be corrected.

Held: Section 297 of the Criminal Procedure Act, Act 51 of 1977, provides that a sentence imposed may be suspended in whole or in part for a period not exceeding five years.

Held: The conviction is confirmed and the sentence is set aside.

Held: The accused is fined N\$6 500 or 29 months' imprisonment of which the amount of N\$1 000 or 18 months' imprisonment is suspended for a period of 5 years on condition the accused is not convicted of assault, assault with the intention to do grievous bodily harm or attempted murder, committed during the period of suspension.

ORDER

In the result I make the following orders:

1. The conviction is confirmed.
2. The sentence is set aside and substituted with the following:
3. The accused is fined N\$6 500 or 29 months' imprisonment of which the amount of N\$1 000 or 18 months' imprisonment is suspended for a period of 5 years on condition the accused is not convicted of assault, assault with the intention to do grievous bodily harm or attempted murder, committed during the period of suspension.

REVIEW JUDGMENT

MILLER AJ (PARKER AJ concurring):

[1] This matter came before me on review.

[2] The accused was convicted of the crime of assault read with the provisions of the Domestic Violence Act, Act 4 of 2003.

[3] The accused was convicted on the charge preferred. He admitted two previous convictions for similar offences on 10 July 2015 and 22 May 2018 respectively.

[4] The magistrate imposed the following sentence:

A fine in the amount of (six thousand five hundred Namibian Dollars) N\$6 500 or alternatively 29 (twenty nine) months imprisonment of which a period of 18 months imprisonment is suspended for a period of 7 (seven) years on condition the accused is not convicted of similar offences of assault during a period of suspension.

[5] The conviction is in accordance with justice and must be confirmed.

[6] The sentence imposed, however, is in some respects deficient and not in accordance with the law. Firstly Section 297 of the Criminal Procedure Act, Act 51 of 1977 provides that a sentence imposed may be suspended in whole or in part for a period not exceeding five years. It was thus not competent to suspend a portion of the sentence imposed for a period of seven years. Secondly it is not correct to suspend a sentence on the basis that the accused is not convicted during a period of suspension of a similar offence. Conceivably the accused may in those circumstances be convicted during the period of suspension of an offence committed prior to the sentence being imposed.

[7] These factors render the sentence imposed irregular and for that reason, stands to be corrected.

[8] In the result I make the following orders:

[8.1] The conviction is confirmed.

[8.2] The sentence is set aside and substituted with the following:

[8.2.1] The accused is fined N\$6 500 or 29 months' imprisonment of which the amount of N\$1 000 or 18 months' imprisonment is suspended for a period of 5 years on condition the accused is not convicted of assault, assault with the intention to do grievous bodily harm or attempted murder, committed during the period of suspension.

P J MILLER
Acting Judge

C PARKER
Acting Judge