

<b>Case Title:</b> <i>The State v Calvin Bock and 1 other</i>	<b>Case No:</b> CR 12/2020
<b>High Court MD Review No:</b> 2341/2019	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Mrs Justice Shivute <i>et</i> Mr Justice Liebenberg	<b>Delivered on:</b> 17 February 2020
<b>Neutral citation:</b> <i>S v Bock</i> (CR 12/2020) [2020] NAHCMD 53 (17 February 2020)	
<b>The order:</b> <ol style="list-style-type: none"> <li>a) The conviction is confirmed.</li> <li>b) The sentence is confirmed but amended to read as follows:   Each accused person is sentenced to 2 years' imprisonment, of which 1 year is suspended for a period of 5 (Five) years on condition that the accused is not convicted of Housebreaking with intent to steal and theft, committed during the period of suspension.</li> </ol>	
<b>Reasons for order:</b>	
SHIVUTE, J (Concurring Liebenberg J) <ol style="list-style-type: none"> <li>1. This is a review in terms of s 302 (1) of the Criminal Procedure Act 51 of 1977 (the CPA) as amended</li> <li>2. Two accused persons appeared in the Magistrate's Court in the district of Windhoek on one count of house breaking with intent to steal and theft. They both pleaded guilty and the court invoked the provisions of section 112(1)(b) .They were sentenced as follows:   "Accused <u>1 and Accused 2</u>: Two years' imprisonment, of which 1 year is suspended for a period of 5 (Five) years on condition that accused persons are not convicted of the offence of housebreaking with   intent to steal and theft, committed during the period of suspension."</li> </ol>	

3. I queried the learned magistrate as to what he meant by the above sentence as it appears to be vague.

4. In reply, the magistrate stated the following:

“Accused 1 and 2 were respectively sentenced to: Two (2) years’ imprisonment without option of a fine,

of which one (1) year imprisonment was suspended for a period of (5) years on condition that the accused is not convicted of the offense of housebreaking with intent to steal and theft, committed during the period of suspension.

5. It is unclear from the wording of the sentence imposed by the learned magistrate as to whether the sentence imposed applies to both accused persons jointly or to each accused person, considering that both accused persons have been convicted of a similar offence and received a similar sentence.

6. A sentence should read clearly and not leave room for any ambiguity. The conviction is in accordance with the law and is accordingly confirmed.

7. In the result, it is ordered that:

a) The conviction is confirmed.

b) The sentence is confirmed but amended to read as follows:

Each accused is sentenced to 2 years’ imprisonment, of which 1 year is suspended for a period of 5 (Five) years on condition that the accused is not convicted of Housebreaking with intent to steal and theft, committed during the period of suspension.

<p><b>N N SHIVUTE</b> <b>JUDGE</b></p>	<p><b>J C LIEBENBERG</b> <b>JUDGE</b></p>
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