

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

PD 61

Case Title: The State vs Paulus Petrus	Case No: CR 91/2022
	Division of Court: Main Division
Heard before: Usiku J <i>et</i> Claasen J	Date of hearing:
	Delivered on: 31 August 2022
Neutral citation: <i>S v Petrus</i> (CR 91/2022) [2022] NAHCMD 452 (01 September 2022)	
<p style="text-align: center;">ORDER:</p> <ol style="list-style-type: none">1. The convictions in count 1 and count 2 are confirmed.2. The sentences in both counts are set aside and substituted as follows: Count 1: The accused is sentenced to pay a fine of N\$2000 or 6 months' imprisonment. Count 2: The accused is sentenced to pay a fine of N\$1000 or 3 months' imprisonment. The sentences are backdated to 10 August 2022.	
<p style="text-align: center;">REASONS FOR ORDER:</p>	

Claasen J (Usiku J concurring)

[1] The accused was convicted of two counts in the district court of Swakopmund. In respect of count 1 he was convicted of negligent driving in contravention of s 80 of the Road Traffic and Transportation Act 22 of 1999 as amended and sentenced to pay a fine of N\$ 2000 or 12 months' imprisonment. In respect of count 2 he was convicted of failure to ascertain damages in contravention of s 49(1) of Act 22 of 1999 as amended and sentenced to pay a fine of N\$ 1000 or 6 months' imprisonment.

[2] Having received the matter on automatic review the convictions on both charges are in order. The same cannot be said about the sentences imposed. Given that it will prejudice the accused if there is a further delay in time, the review court will not address a query to the presiding magistrate.

[3] The qualm that the review court has with the sentences is that in both counts the terms of imprisonment are disproportionate to the fine amounts. In *S v Michael Dickson*¹ Hoff J (as he was then) set aside a sentence of N\$300 or 18 month's imprisonment because of the disproportionate ratio between the fine and the imprisonment. In the *Dickson* matter the review court relied on the principle that when a judicial officer intends to sentence an accused to a fine with an alternative of imprisonment he or she should arrange the sentence in such a way that the alternative of imprisonment is proportional to the fine and the gravity of the offense.

[4] As far as the sentence in count 1 is concerned, 12 months' imprisonment is too harsh in relation to a fine of N\$2000. We hold the same view in respect of 6 month's imprisonment in relation to a fine of N\$1000. The court a quo misdirected itself in that regard and we are at liberty to interfere with the sentences imposed.

¹ *Michael Dickson* unreported case 848/2000 delivered on 2002.08.09.

[5] In the result the following order is made:

1. The convictions in count 1 and count 2 are confirmed.

2. The sentences in both counts are set aside and substituted as follows:

Count 1: The accused is sentenced to pay a fine of N\$2000 or 6 months' imprisonment.

Count 2: The accused is sentenced to pay a fine of N\$1000 or 3 months' imprisonment.

The sentences are backdated to 10 August 2022.

C M CLAASEN JUDGE	D N USIKU JUDGE