

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

<b>Case Title:</b>  The State v Frikkie Kinda	<b>Case No:</b>  CR 29/2023
<b>High Court MD Review No:</b> 198/2023	<b>Division of Court:</b> High Court, Main Division
<b>Coram:</b> Liebenberg J <i>et</i> Claasen J	<b>Delivered:</b> 16 March 2023
<b>Neutral citation:</b> <i>S v Kinda</i> (CR 29/2023) [2023] NAHCMD 121 (16 March 2023)	
<b>ORDER:</b>  1. The conviction is confirmed.  2. The sentence imposed is amended to read: '36 (thirty-six) months' imprisonment of which 24 (twenty-four) months' is suspended for a period of 5 (five) years on condition that the accused is not convicted of a contravention of s 2(a) of Act 41 of 1971,	

committed during the period of suspension’.

**REASONS FOR ORDERS:**

LIEBENBERG J (CLAASEN J concurring):

[1] The accused was charged with count 1: Drugs – Dealing in dependence producing substances – Contravening s 2(a) read with section 1, 2(i) and/or 2(ii), 8, 10, 14 and Part I of the Schedule of Act 41 of 1971, as amended. First alternative to count 1 – Drugs-Possession of dependence-producing substance – Contravening s 2 read with section 1,2(i) and/or 2(iv),7,8,10,14 and Part I of the Schedule of Act 41 of 1971, as amended. He pleaded guilty to the main count of contravening s 2(a) of Act 41 of 1971 and was accordingly convicted.

[2] Upon receipt of the review record, it transpired that the s 112 (2) statement did not form part of the record and a query was addressed to the magistrate to have same provided. The court further queried whether the conditions of sentence imposed by the magistrate were proper.

[3] The sentence imposed by the court was as follows: ‘36 (thirty-six) months’ imprisonment of which 24 months’ are suspended for a period of 5 (five) years on condition that accused person is not found guilty in dealing/possession of drugs’.

[4] In response, the magistrate intimated that the failure on her part to attach the s 112(2) statement was a mere oversight. Nothing much turns on this as it was subsequently provided and attached to the record. As regards the sentence imposed, the concession was made that it was an error and should have read thus: ‘36 (thirty-six) months’ imprisonment of which 24 months’ are suspended for a period of 5 (five) years on

condition that accused person is not convicted of the offence of Contravening s 2(a) read with section 1, 2(i) and/or 2(ii), 8, 10, 14 and Part I of the Schedule of Act 41 of 1971 of the Abuse of Dependence-Producing Substances and Rehabilitations Centers Act 41 of 1971 as amended, committed during the period of suspension’.

[5] In the circumstances, the sentence imposed stands to be corrected to read that the accused should not be convicted of the prohibited offence committed during the period of suspension.

[6] In the result, it is ordered that:

1. The conviction is confirmed.
2. The sentence imposed is amended to read: ‘36 (thirty-six) months’ imprisonment of which 24 (twenty-four) months’ is suspended for a period of 5 (five) years on condition that the accused is not convicted of the offence of a contravention of s 2(a) of Act 41 of 1971, committed during the period of suspension’.

**J C LIEBENBERG**  
**JUDGE**

**C CLAASEN**  
**JUDGE**