

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

Case Title: The State v Delano Benito Jagger and another	Case No: CR 38/2024
High Court MD Review No: 459/2024	Division of Court: High Court, Main Division
Coram: Shivute J <i>et</i> January J	Delivered on: 16 May 2024
Neutral citation: <i>S v Jagger</i> (CR 38/2024) [2024] NAHCMD 231 (16 May 2024)	
ORDER: 1. The convictions are confirmed. 2. The sentences are altered as follows: Accused 1 and 2 are each sentenced to 18 (eighteen) months' imprisonment of which 6 (six) months are suspended for a period of 3 (three) years on condition that the accused is not convicted of housebreaking with intent to steal and theft	

committed during the period of suspension.

REASONS FOR ORDERS:

SHIVUTE J (JANUARY J concurring):

[1] This is a review matter which came before me in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 as amended (the CPA).

[2] The two accused appeared in the Magistrate's Court for the district of Mariental, held at Kalkrand on a charge of housebreaking with intent to steal and theft. Both accused pleaded guilty and the court proceeded to question each of them in terms of section 112(1)(b) of the CPA. After the questioning, both accused were found guilty as charged.

[3] The court a quo proceeded to sentence the two accused as follows:

'Accused 1 and 2- Count 1: 18 (eighteen) months' imprisonment of which 6 (six) months are suspended for a period of 3 (three) years on condition that the accused is not convicted of housebreaking with intent to steal and theft committed during the period of suspension.'

[4] The two accused were properly convicted, however, the sentence is vague. Accordingly, I enquired from the magistrate what he meant with the sentence. The magistrate responded that he omitted the word 'each' to mean that each of the sentenced accused in the matter received the imposed sentence.

[5] The magistrate's response is well placed.

[6] In regard to the sentence imposed on accused 1 and 2, it is not clear whether or not the 18 months' imprisonment imposed is in respect of each of the 2 accused persons. In regard to the condition of suspension of sentence imposed on each accused, it must

be clear to both accused the period during which another conviction on housebreaking with intent to steal and theft would or might bring their own suspended sentence into operation.

[7] As a result, the convictions and sentences are confirmed, however, considering the above and to remove any cause of confusion, misinterpretation or uncertainty, the sentences are altered as follows:

Accused 1 and 2 are each sentenced to 18 (eighteen) months' imprisonment of which 6 (six) months are suspended for a period of 3 (three) years on condition that the accused is not convicted of housebreaking with intent to steal and theft committed during the period of suspension.

**N N SHIVUTE
JUDGE**

**H C JANUARY
JUDGE**