

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI

APPEAL JUDGMENT

Case no: HC-NLD-CRI-APP-CAL-2017/00001

SHIVUTE MATHEW

APPELLANT

v

STATE

RESPONDENT

Neutral citation: *Mathew v S* (HC-NLD-CRI-APP-CAL-2017/00001) [2018]
NAHCNLD 17 (08 February 2018)

Coram: TOMMASI J et JANUARY J

Heard: 1 February 2018

Delivered: 8 February 2018.

Flynote: Appeal – Duplication of convictions – Malicious damage to property (window of a car) and theft from a motor vehicle – Clearly an improper duplication of convictions – Conviction and sentence in respect of offence of malicious damage to property set aside – Conviction and sentence for theft confirmed.

ORDER

1. The conviction and sentence in respect of the offence of malicious damage to property are hereby set aside;
2. The appeal against the sentence on the remaining count of theft out of the motor vehicle is dismissed; and
3. The conviction and sentence in respect of the offence of theft from a motor vehicle are confirmed;
4. Matter is removed from the roll: Case finalized.

JUDGMENT

TOMMASI J (JANUARY J concurring):

[1] The appellant was convicted of malicious damage to property and theft from a motor vehicle. He was sentenced to 24 months' imprisonment for the offence of malicious damage to property and 12 months' imprisonment for theft out of a motor vehicle. The appellant appealed against sentence only.

[2] The appellant, in his grounds of appeal stated that he applies for a reduction in the sentence on the ground that the learned magistrate erred or misdirected him/herself by imposing direct imprisonment instead of a reasonable fine or giving him the opportunity to do community sentence.

[3] Although the appellant did not appeal against the convictions, it came to the attention of this court that there was an improper duplication of convictions which is not in accordance with justice. This court invited counsel and the learned magistrate to respond to this issue.

[4] The evidence adduced reflects that the appellant broke the rear window and stole a camera, memory card, jeans and a cellphone all valued at N\$7040. The window was repaired by the complainant and the costs thereof amounted to N\$429.

[5] The learned magistrate conceded that the appellant ought to have been convicted only of theft out of a motor vehicle. Both Mr P Greyling, counsel acting amicus curiae for the appellant, and Mr Tjiveze, counsel for the respondent, agreed that the conviction for malicious damage to property ought to be set aside. Both counsel argued that the sentence of 12 months' imprisonment was an appropriate sentence for the offence.

[6] The reasons advanced by the learned magistrate for imposing a custodial sentence cannot be faulted and there is no reason for this court to interfere with the custodial sentence which the court imposed in respect of the remaining count of theft out of a motor vehicle.

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

1. The conviction and sentence in respect of the offence of malicious damage to property are hereby set aside;
2. The appeal against the sentence on the remaining count of theft out of the motor vehicle is dismissed; and
3. The conviction and sentence in respect of the offence of theft from a motor vehicle are confirmed;
4. Matter is removed from the roll: Case finalized.

M A Tommasi

Judge

H C January

Judge

APPEARANCES:

FOR THE APPELLANT:

J Greyling
Of Greyling & Associates, Oshakati
(amicus curiae)

FOR THE RESPONDENT:

R Tjiveze
Of Office of the Prosecutor-General,
Oshakati