

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Festus Mbishi</i>	CR No.: 2/2021 Case No.: EENHANA 121/2019
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J et Honourable Ms. Justice Salionga J	Delivered on: 25 January 2021
Neutral citation: <i>S v Mbishi</i> (CR 2/2021) [2021] NAHCNLD 3 (25 January 2021)	
The order: <ol style="list-style-type: none">1. The sentence of four (4) years imprisonment without option of fine (sic), credit given for the time served is set aside;2. The accused is sentenced to 18 months imprisonment;3. The sentence is backdated to 3 July 2020.	
Reasons for the order:	
<i>Introduction</i> <p>[1] The accused was charged with assault by threat read with the provisions of section 21 of the Domestic Violence Act, Act 4 of 2003. The accused threatened to kill his 82 year old grandma with a panga. He pleaded guilty and was convicted pursuant to the provisions of</p>	

section 112(1) (b) of the Criminal Procedure Act, Act 51 of 1977 (the CPA). He was sentenced on 3 July 2020 to 4 years' imprisonment without the option of a fine.

[2] The case was submitted for automatic review in the ordinary course in terms of section 302 of the CPA on 14 July 2020. It was not certified to be in accordance with justice because the reviewing judge was not satisfied that the accused admitted all the elements of the offence, particularly wrongfulness and unlawfulness. The conviction and sentence were set aside and the record of proceedings were remitted with a directive that the accused be properly questioned in terms of section 112(1) (b).

[3] The magistrate was further directed in the event of a conviction to consider the time that the accused spent in custody since 3 July 2020. The magistrate complied with the directive and questioned the accused afresh after he pleaded guilty again. The case is again before me for automatic review with a letter from the magistrate to the registrar.

[4] The conviction is confirmed.

The sentence

[5] In the letter to the Registrar, the magistrate stated amongst others: 'After going through the record, I realized that the sentence is incomplete in that it does not give the length of period served or the effective time to be served. Since, the accused has been in custody since 03 July 2020, the effective term of imprisonment should be Three (3) years, nine (9) and Nine (9) days.'

[6] The magistrate sentenced the accused to 4 years imprisonment without the option of a fine with credit for time served since 03 July 2020'. This is an incompetent sentence. The magistrate clearly did not understand the directive. When calculated from 03 July 2020 until the date of the new sentence on 13 October 2020, the accused served about three and a half months imprisonment. That is the period that needs consideration.

Conclusion

[7] The accused is 18 years old and a first offender. He is not married and has no children. He schooled to grade 2. He herds cattle to generate an income. He indicated to court that he is remorseful about the crime.

[8] Considering the age of the accused; that he is unsophisticated; that he is remorseful; that he pleaded guilty; that he is a first offender, I find the sentence to be harsh and shockingly inappropriate. I also considered the period that he served until today.

Judge(s) signature	Comments:
January J	
Salionga J	