

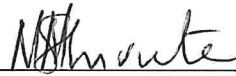
Case Title: <i>The State v Jan Kondeb</i>	Case No: CR 05/2019
High Court MD Review Case No: 1285/2018	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Ms Justice Shivute	Delivered on: 23 January 2019
Neutral citation: <i>S v Kondeb</i> (CR 05/2019) [2018] NAHCMD 05/2019 (23 January 2019)	
<p>The order:</p> <ul style="list-style-type: none"> a) The conviction is confirmed. b) The sentence is confirmed, but amended to read: Three (3) years' imprisonment of which one (1) year is suspended for a period of five (5) years, on condition that the accused is not convicted of the offence of housebreaking with intent to commit an offence or theft, committed during the period of suspension. c) The sentence is antedated to 26.02.2018. 	
Reasons for order:	
<p>LIEBENBERG J (concurring SHIVUTE J)</p> <ol style="list-style-type: none"> 1. The accused appeared in the Gobabis Magistrate's Court on a charge of Housebreaking with intent to steal and Theft of a coal stove valued at N\$19 000. He was convicted on his plea of guilty and sentenced to three (3) years' imprisonment. 2. On review a query was directed to the magistrate enquiring whether, in view of the stove having been recovered and the accused having pleaded guilty, the court considered a partly suspended sentence. 3. In his response the magistrate conceded that in the circumstances a partly suspended sentence would have been appropriate as the accused was also a first offender. The concession is proper. 	

4. The offence committed is indeed serious and would undoubtedly justify a sentence of direct imprisonment, moreover as pointed out by the magistrate, that this type of offence is prevalent in that court's jurisdiction. However, the mitigating circumstances are such that it would serve the interests of justice to suspend part of the sentence and afford the accused the opportunity of rehabilitation outside prison, instead of serving the sentence in full.
5. In the result, it is ordered:
- a) The conviction is confirmed.
 - b) The sentence is confirmed, but amended to read: Three (3) years' imprisonment of which one (1) year is suspended for a period of five (5) years, on condition that the accused is not convicted of the offence of housebreaking with intent to commit an offence or theft, committed during the period of suspension.
 - c) The sentence is antedated to 26.02.2018.



J C LIEBENBERG

JUDGE



N N SHIVUTE

JUDGE