

REPUBLIC OF NAMIBIA

NOT REPORTABLE



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
JUDGMENT**

**CR No: 71/2018**

In the matter between

**THE STATE**

v

**SIMON DOESEB**

**(HIGH COURT MD REVIEW CASE NO 1704/2015)**

*Neutral citation:* *S v Doeseb* (CR 71/2018) [2018] NAHCMD 300 (26 September 2018)

**CORAM: NDAUENDAPO J et LIEBENBERG J**

**DELIVERED: 26 September 2018**

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**ORDER**

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The conviction and sentence are not confirmed.

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## JUDGMENT

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LIEBENBERG J: (Concurring NDAUENDAPO J)

[1] On 25 November 2015 when this matter came before me on review in terms of s 302(1) of the Criminal Procedure Act 51 of 1977 (CPA), a query was directed to the magistrate addressing three pertinent issues which he was required to address. After almost three years a statement has now been received from the magistrate, accompanied by an explanation that he has since September 2016 been transferred from Otjiwarongo to Otavi Magistrate's Court, hence the delay in the reply. Bearing in mind that the query had been with the magistrate for a period of 10 months prior to his transfer, I find the explanation proffered unsatisfactory. The fact that the clerk of the court on the 19<sup>th</sup> of November 2015 erroneously entered the word *CONFIRMED* on the review cover sheet rather seems to have been the cause for the magistrate's failure to respond to the query timeously. Remissness of this nature erodes the proper administration of justice and should at all cost be guarded against.

[2] The extent of the query concerned the disposal of the matter in terms of s 112(1) (a) of the CPA in circumstances where the court should rather have invoked the provisions of subsection (1)(b) of the section in view of the seriousness of the offence of theft committed.<sup>1</sup> As a result thereof the court was obliged to impose a fine, but wholly suspended same for a period of two years which was deemed to have been unjustified and exceptionally lenient. The formulation of the sentence was also improper.

[3] Whereas the period for which the suspended sentence has elapsed (two years), any attempt at this late stage to correct the record, or overturn the court's findings, would be pointless and an exercise in futility. For the same reason I decline to confirm the conviction and sentence.

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<sup>1</sup> *S v Onesmus* 2011 (2) NR 93 (HC).

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J C LIEBENBERG

JUDGE

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G N NDAUENDAPO

JUDGE