**REPUBLIC OF NAMIBIA**

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**IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**REVIEW JUDGMENT**

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| **Case Title:***The State v Gustav Stein* | **Case No:** CR 100/2019 |
| **Division of Court:** Main Division |
| **Heard before:**Honourable Mr. Justice Unengu AJ *et*Honourable Ms. Justice Usiku J | **Delivered on:**09 December 2019 |
| (HIGH COURT MAIN DIVISION REVIEW REF NO. 2254/2019) |
| **Neutral citation:** *S v Stein* (CR 100/2019) [2019] NAHCMD 541 (09 December 2019) |
| **The order:**1. The conviction is in order and is confirmed.
2. The sentence of four (4) months imprisonment imposed by the magistrate is hereby set aside and substituted for the following sentence:

‘A fine of N$2 000 or four (4) months imprisonment in default of payment.’3. The sentence is antedated to 14 October 2019. |
| **Reasons for order:** |
| UNENGU, AJ (USIKU, J concurring):1. The matter was submitted for automatic review following the provisions of s 302 Criminal Procedure Act, 51 of 1977.
2. The accused was charged, convicted and sentenced to serve an imprisonment sentence of four (4) months for possession of cannabis.
3. Given the fact that the matter was disposed of in terms of s 112(1)(a), I found the sentence not to be in accordance with justice, hence I sent a query to the learned magistrate to explain why she imposed an effective sentence of imprisonment without – an option of a fine.
4. The magistrate in her reply conceded the mistake and indicated that she was influenced by the accused’s previous conviction of the same offence proved by the State to impose a custodial sentence without an option of a fine and in the same vein proposed that her sentence be substituted with a sentence of a fine of N$2 000 or four (4) months imprisonment.
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| E P UNENGUACTING JUDGE | D N USIKUJUDGE |