

CASE NO.: CR163/2007

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

Versus

RAFAEL GAROEB

[HIGH COURT REVIEW CASE NO.: 1558/07]

CORAM: , J *et* PARKER, J

Delivered on:

2007 November 28

REVIEW JUDGMENT

PARKER, J.:

[1] The accused was charged before the Windhoek Magistrate's Court on six counts namely, malicious damage to property (count 1), assault G.B.H. (count 2), assault (threat) (count 3), attempted murder (count 4), contravention of s.82(1) of Act 22 of 1999 (reckless or negligent driving) (count 5), and attempted murder (count 6). Before the trial commenced, counts 1, 2, 3 and 5 were withdrawn. The accused pleaded guilty to two counts of attempted murder, and was convicted on his plea as follows: "18 months' imprisonment, wholly suspended for three years on condition accused is not convicted of murder, attempted murder and assault with the intent to do grievous bodily harm (both counts taken

together)”).

[2] I have perused the record, and I am satisfied that the proceedings are in accordance with justice. However, the formulation of the sentence is wrong inasmuch as it omits the words “committed” in the condition attached to the suspension of a part of the sentence.

[3] The purpose of a suspended sentence is to discourage the accused from committing a similar offence during the period of suspension: if the accused commits a similar offence within the period of suspension, the suspended sentence may be brought into operation even though the accused is only convicted of the offence after the period of suspension. In the present case, the suspension is subjected to the condition that both the commission of the offence and the accused’s conviction be within the suspended period of three years. This is wrong because for all manner of reasons, it can happen that the conviction only follows after the period of suspension has expired. Thus, in the manner in which the condition of suspension is framed by the trial court in the present case, the suspended imprisonment cannot be put into operation if the accused is not convicted of the named offences within the period of suspension. That being the case, the condition of suspension as framed by the trial court cannot stand.

[4] In the result, the following order:

The conviction and sentence are confirmed, but the condition of suspension is amended to read:

“on condition that the accused is not convicted of murder, attempted murder and assault with intent to do grievous bodily harm, committed during the period of suspension.”

PARKER, J

I agree.

MAINGA, J