

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**BONIFATIUS JOSSOP**

(HIGH COURT REVIEW CASE NO.: 674/2007)

**CORAM: VAN NIEKERK, J et MULLER, J**

Delivered on: 26 June 2007

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**REVIEW JUDGMENT**

**MULLER, J.:**

[1] The accused was convicted of contravening s 35 (1) of the Act 19 of 1990 i.e. assault on a member of the police force. He was sentenced to:

“12 months imprisonment of which 6 months o/c accused pays a fine of N\$2000.00 by 30/09/06. The rem 6 months wholly suspended for 5 years o/c accused does not within the period of suspension commit a similar offence i.e. C/S 35 (1) Sec 1, 13 of 19 of 1990. (Assault on a member of the police).”

[2] I am satisfied that the conviction is in accordance with justice but the sentence is not only confusing, it is entirely incorrect. The accused was sentenced almost a year ago and even if the conditions, if they could be understood, had not been complied with. The 6 months effective sentence of imprisonment has already expired. I had enquiries made to the clerk of the court at the Magistrate's Court, Karasburg and was informed that the accused did not pay the fine, has served his prison sentence and has been released. The correction of the sentence is therefore academic. However, it must be corrected.

[3] From the sentence that the magistrate imposed, I deduct that the intention was to impose a fine of N\$2000, or in default of payment, to impose a sentence of 6 months effective imprisonment. It was further intended that, in addition, the accused be sentenced to a further 6 months imprisonment, suspended for 5 years on condition he is not convicted of committing an offence in contravention of s 35 (1) of Act 19 of 1990, within the period of suspension.

[4] Because of the late submission of this review and the fact that the accused had already been released, it is not in the interest of justice, nor of the accused, to delay the matter any further by addressing a query to the magistrate and thereafter give judgment only in respect of the correction of the sentence. Consequently, I shall substitute the sentence imposed by the magistrate with the correct sentence myself.



[5] The following orders are made:

1. The conviction is confirmed.
2. The sentence imposed by the magistrate on 27 July 2006 is set aside and is substituted with the following sentence, effective from 27 July 2006:

“The accused is sentenced to pay a fine of N\$2000 or, if in default to pay such fine, 6 months imprisonment.

In addition the accused is sentenced to 6 months imprisonment, fully suspended for a period of 5 years on condition that the accused is not convicted of committing an offence in contravention of s 35 (1) of Act 19 of 1990, committed within the period suspension.”

**MULLER, J**

I concur

**VAN NIEKERK, J**