

CASE NO.: CR 45/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

RIAAN NAWASEB

GERHARD GANUSEB

[HIGH COURT REVIEW CASE NO.: 1323/2010]

CORAM: SWANEPOEL, J et SIBOLEKA, J

Delivered on: 2010 SEPTEMBER 24

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The two accused aged 23 and 22 respectively, appeared in the District Magistrate Court at Swakopmund on possession of suspected stolen property in contravention of section 6 of Ordinance 12 of 1956.

They pleaded guilty and after questioning in terms of section 112(1)(b) of Act 51 of 1977 they were convicted.

[2] The convictions are in order and will be confirmed.

[3] The two accused were sentenced as follows:

"14 (Fourteen) months imprisonment of which 10 (Ten) months are suspended for 5 years on condition each accused is not again convicted of C/S 6 of Ordinance 12 of 1956, being the offence of possession of suspected stolen property for which the contravention occurs during the period of suspension and in respect of which a term of imprisonment is imposed without the option of a fine."

[4] The manner in which this sentence is framed, is not clear, particularly the words "for which the contravention occurs" and therefore cannot be allowed to stand.

[5] In the result:

(a) The convictions are confirmed.

(b) The sentence imposed by the Magistrate on each accused is set aside and substituted with the following:

Fourteen (14) months imprisonment of which ten (10) months are suspended for five (5) years on condition that the accused is not found guilty of possession of suspected stolen property in contravention of section 6 of Ordinance 12 of 1956, committed during the period of suspension, and in respect of which a term of imprisonment is imposed without the option of a fine.

SIBOLEKA, J

I agree

SWANEPOEL, J