

CASE NO.: CR 46/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

TOBIAS VAN WYK

[HIGH COURT REVIEW CASE NO.: 709/2010]

CORAM: NDAUENDAPO, J et SIBOLEKA, J

Delivered on: 2010 SEPTEMBER 24

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The 39 year old accused appeared in the District Magistrate Court at Usakos on a charge of Assault by Threat read with Section 1 of the Combating of Domestic Violence Act, Act no. 4 of 2003. He pleaded not guilty and after the trial he was convicted and sentenced as follows:

"6 (Six) months imprisonment of which 6 (Six) months is suspended for a period of Six (6) months on condition that the accused is not convicted of contravening of the provisions of the Combating of Domestic Violence as Amended by Act 20 of 1985 committed during the period of suspension."

[2] The conviction is in order and will be confirmed. However, the above sentence is not in accordance with justice because it is incorrectly written out.

[3] In the result:

(a) The conviction is confirmed.

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

Six (6) months imprisonment wholly suspended for a period of one (1) year on condition that the accused is not found guilty of Assault, Assault by Threat read with Section 1 of the Combating of Domestic Violence Act, Act no. 4 of 2003, committed during the period of suspension.

SIBOLEKA, J

I agree

NDAUENDAPO, J