



CASE NO.: CR 19/2012

"Not Reportable"

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

VS

TAWANA DERICUS

(HIGH COURT REVIEW CASE NO.: 304/2012)

CORAM: PARKER J et, SHIVUTE J

Delivered on: 2012 February 29

REVIEW JUDGMENT

PARKER, J [1] Before the Katima Mulilo Magistrates Court, the accused pleaded not guilty to the main charge of attempted murder and guilty to the alternative charge of negligent discharge of a firearm in contravention of s. (1)(o), read with s. 1, s. 37(1), s. 38(2) and s. 39 of Act 7 of 1996. He was found not guilty of the main charge but convicted on his own plea of guilty on the alternative charge and sentenced accordingly.

[2] The formulation of the condition is wrong because the suspension is subjected to the condition that both the commission of the offence and the accused's conviction should be within the suspended period of three years. A condition of suspension should not be formulated in such a way as to include both the commission of the offence and the conviction of the accused in the period of suspension because, for all manner of reasons, it can happen that the conviction only follows after the period of suspension has expired. If that happens, the suspended imprisonment cannot be put into operation because the accused would not been convicted within the period of suspension. Additionally, a sentence of a fine that merely says 'One thousand Namibia dollars (N\$1,000-00)' is, with respect, meaningless. The phrase 'A fine of' should proceed what is in reality a fine.

[3] In the result, I make the following order:

- (1) The conviction and sentence are confirmed.
- (2) The condition of suspension is deleted and the following condition is substituted therefor:

A fine of one thousand Namibian dollars (N\$1 000-00) or in default of payment six (6) months' imprisonment, wholly suspended for a period of five (5) years on condition that the accused is not convicted of contravening the provisions of Act 7 of 1996, committed during the period of suspension.

- (3) In terms of section 10 (of Act 7 of 1996) enquiry the accused is declared unfit to possess a firearm for twenty four (24) months.

- (4) The Bickel 4.5 mm short gun is forfeited to the State in terms of section 35 of Act 51 of 1977.

PARKER, J

I agree.

SHIVUTE, J