



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case no: CR 12/2013

THE STATE

Versus

JOSEPH NGUUDIPALELWA

(HIGH COURT MAIN DIVISION REF. NO 521/2012)

(MAGISTRATE SERIAL NO. 02/2012 :)

Neutral citation: *The State v Nguudipalelwa* (CR 12/2013) [2013] NAHCMD 47
(26 February 2013)

Coram: SHIVUTE, J *et* UNENGU, AJ

Delivered: 26 February 2013

Flynote: - S 10 (7) Act No. 7 of 1996 – compulsory to bring to the attention of the accused convicted of unlawful possession of an arm without a licence, permit or other authorisation and afford him an opportunity to advance reasons why he should not be declared or deemed to be declared unfit to possess an arm. Failure to do that – misdirection.

Summary: - The accused was charged with the offence of possessing of a firearm without a licence, contravening s 2 read with ss 1, 38 (2) and 39 of Act 7 of 1996, as amended. He pleaded guilty and convicted as charged. When sentencing the accused the learned magistrate failed to invoke the provisions of s10 (7) of the Act. Failure to do so amounts to a misdirection on the part of the trial magistrate.

ORDER

1. The conviction as well as the sentence is confirmed.
2. The matter is referred back to the magistrate to invoke the provisions of s 10 (7) Act 7 of 1996. When the magistrate is invoking the provisions of s 10 (7) he should take into account the date when the accused was convicted.

REVIEW JUDGMENT

SHIVUTE J (UNENGU, A J concurring):

[1] The accused was charged with possession of a firearm without a licence contravening s 2 read with ss 38 (2) and 39 of Act 7 of 1996 as amended. He pleaded guilty to the charge and he was rightly convicted. He was sentenced accordingly. However, the learned magistrate failed to invoke the provisions of s 10 (7) of Act 7 of 1996 which is compulsory for the magistrate to bring it to the attention of the accused and to be given the opportunity to advance reasons why he should not be declared or deemed to be declared to be unfit to possess a firearm.

[2] I raised a query with the magistrate why he did not invoke the provisions of s 10 (7) and he replied that it was an oversight on his part.

[3] The magistrate did not exercise his discretion properly and a failure to invoke the above provision amounts to a misdirection. In view of this I have no alternative

but to refer the matter back to the magistrate to invoke the provisions of s 10 (7) of Act 51 of 1977.

[4] In the result the following order is made:

1. The conviction as well as the sentence are confirmed.
2. The matter is referred back to the magistrate to invoke the provisions of s 10 (7) Act 7 of 1996. When the magistrate is invoking the provisions of s 10 (7) he should take into account the date when the accused was convicted.

N N Shivute
Judge

E P Unengu
Acting Judge

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