

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA, MAIN DIVISION

JUDGMENT

CR No: 15/2016

In the matter between

THE STATE

And

JANTZE FRITZ

BENEG JOSSOP

ALBERTUS JOSSOP

BONAFATIUS VAN NEEL

HIGH COURT MD REVIEW CASE NO 63/2016

Neutral citation: State v Fritz (CR 15/2016) [2016] NAHCMD 56 (03 March 2016)

CORAM: LIEBENBERG J et SHIVUTE J

DELIVERED: 03 March 2016

Flynote: Criminal procedure – Trial – Plea – Plea of guilty – Questioning in terms of s 112 (1)(b) of Criminal Procedure Act 51 of 1977 – Where more than one accused, magistrate must question each individually.

ORDER

1. The conviction and sentence in respect of each of the accused are set aside.
2. The matter is remitted to the same court in terms of s 312 (1) of Act 51 of 1977 with the direction to question each accused individually in terms of s 112 (1)(b) of the Act.
3. In the event of a conviction, the court, in sentencing, must have regard to the sentence already served by the accused.

JUDGMENT

LIEBENBERG J: (Concurring SHIVUTE J)

[1] This is a review case in which the four accused were jointly charged with counts of escaping (count 1) and malicious damage to property (count 2). All pleaded guilty on both counts and were convicted. In respect of count 2 they were convicted on their mere pleas of guilty and the charge disposed of in terms of s 112 (1)(a) of the Criminal Procedure Act, 51 of 1977 (CPA). On count 1 the court questioned them as provided for in terms of s 112 (1)(b) of the CPA.

[2] The accused were jointly questioned and on several of the questions posed to the accused, a single answer is reflected on the record, followed by an explanation in brackets that it is the reply of all four the accused. Having consulted the authorities referred to in a query directed pertaining to the procedure adopted by the court, the magistrate concedes that it was irregular to jointly question the accused. The concession is properly made.

[3] Where there is more than one accused who pleaded guilty and the court invokes the provisions of s 112 (1)(b), it is not desirable to put a question and then ask each of the accused to reply thereto in turn. This court in *S v Valedo and Others*¹ found that where the court has to question more than one accused, each accused must be questioned separately and not simultaneously. It thus means that the examination of

¹1990 NR 81 (HC).

each accused must be done separately from the others. (See also: *State v Swartbooi*²; *S v Faber*³)

[4] For the aforementioned reasons, it is evident that the questioning in the instant matter is irregular and the convictions and sentences fall to be set aside.

[5] In the result, it is ordered:

1. The conviction and sentence in respect of each of the accused are set aside.
2. The matter is remitted to the same court in terms of s 312 (1) of Act 51 of 1977 with the direction to question each accused individually in terms of s 112 (1)(b) of the Act.
3. In the event of a conviction, the court, in sentencing, must have regard to the sentence already served by the accused.

J C LIEBENBERG

JUDGE

²(CR 78/2014) [2014] NAHCMD 371 (02 December 2014).

³1979 (1) SA 710 (NC).

**N N SHIVUTE
JUDGE**