



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 9/2016

In the matter between:

THE STATE

And

PHILLIPUS TEEK AND ANOTHER

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1752/2015)

Neutral citation: State v Teek and Another (CR 9/2016) [2016] NAHCMD 59 (8 March 2016)

Coram: SIBOLEKA J and USIKU J

Delivered: 8 March 2016

Flynote: Criminal Procedure – Sentence – Formulation thereof.

Summary: The accused was convicted on a charge of use of motor vehicle without the owner's consent and sentenced to 3 months imprisonment of which 3 years were suspended on conditions.

ORDER

- (a) The conviction is confirmed.
- (b) The sentence is substituted with the following:
Each accused is sentenced to a fine of N\$1000 in default of payment three months imprisonment wholly suspended for 3 years on condition the accused is not convicted of the crime of using a motor vehicle without the owners' consent committed during the period of suspension.

REVIEW JUDGMENT

USIKU J, (SIBOLEKA J CONCURRING)

[1] This matter comes to me on review. The accused appeared before the magistrate's court, Gobabis and was convicted on a charge of use of a motor vehicle without owner's consent and sentenced to 3 months imprisonment of which 3 years was suspended on conditions.

[2] I directed a query to the learned magistrate, to which she responded as follows:" The sentence typed as per the cover is incomplete. Perhaps an oversight on my part in proof reading the proceedings. Accordingly, the correct sentence to appear thereon should be that from page 3 of the record of proceedings that read: accused is sentenced to a fine of N\$1000 in default of payment three months imprisonment wholly suspended for a period of 3 years on condition the accused is not convicted of using a motor vehicle without the owner's consent. Respectfully, if the learned judge confirm the proceedings to be in accordance with justice, that the

sentence read: each accused is sentenced to a fine of N\$1000 in default of payment three months imprisonment wholly suspended for a period of 3 years on condition the accused is not convicted of using a motor vehicle without the owner's consent committed during the period of suspension.

[3] I am of the view that the concession is correctly made in view of the provisions of section 297 1 (b) of the Criminal Procedure Act 51 of 1977 which reads as follows:” Where a court convicts a person of any offence, other than the offence in respect of which any law prescribes a minimum punishment, the court may in its discretion pass sentence but order the operation of the whole or any part thereof to be suspended for a period not exceeding five years on any conditions referred to in paragraph (a) (i) which the court may specify in the order:”

[4] In the instant case, the sentence imposed by the magistrate is 3 months imprisonment of which 3 years on the following conditions. The sentence is ambiguous and cannot be understood.

[5] Based on these reasons, I make the following orders:

- (a) The conviction is confirmed.
- (b) The sentence is substituted with the following:

Each accused is sentenced to a fine of N\$1000 in default of payment three months imprisonment wholly suspended for 3 years on condition the accused is not convicted of the crime of using a motor vehicle without the owners' consent committed during the period of suspension.

DN USIKU
Judge

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A SIBOLEKA
Judge