

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT

Case no: CR 16/2016

In the matter between:

**THE STATE**

**And**

**EDWIN AFRIKANER**

**ACCUSED**

**Neutral citation:** *State v Afrikaner* (CR 16/2016) [2016] NAHCMD 67 (11 March 2016)

**Coram:** SIBOLEKA J and USIKU J

**Delivered:** 11 March 2016

**Flynote:** Criminal law: The condition of a suspended sentence must be clear to inform the accused what it is that he should not do during the period of suspension.

**Summary:** Accused was convicted for driving a motor vehicle while under the influence of alcohol.

Held: The conviction is confirmed.

The sentence is set aside and replaced with the following:

“Count 1; N\$10 000 (ten thousand Namibia dollars or in default of payment (24) twenty four months imprisonment wholly suspended for a period of five years on condition that the accused is not convicted of Driving under the influence of intoxicating liquor in contravention of section 82(1)(a) of The Road and Transportation Act 22 of 1999 as amended, committed during the period of suspension.

The sentence is antedated 21 January 2016.

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### **ORDER**

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The conviction is confirmed.

The sentence is set aside and substituted with the following: N\$10 000 or in default of payment (24) months imprisonment wholly suspended for a period of five years on condition that the accused is not convicted of driving under the influence of alcohol in contravention of section 82(1)(a) of The Road and Transportation Act 22 of 1999 as amended, committed during the period of suspension.

The sentence is antedated: 21 January 2016.

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### **REVIEW JUDGMENT**

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SIBOLEKA J (USIKU J concurring):

[1] This is a review matter.

[2] The accused appeared in the Magistrate’s Court at Gibeon, Mariental district for driving under the influence of alcohol in contravention of section 82(1)(a) of The Road and Transportation Act 22 of 1999. After questioning in terms of section 112 (1) (b) of the Criminal Procedure Act 51 of 1977, he was convicted and sentenced as follows:

“Sentence: Count 1: N\$10 000 (ten thousand Namibian Dollars) of which N\$10 000 (ten thousand Namibian Dollars) is suspended for a period of 5 (five) years on the

following conditions: 1. On the condition that the accused is not convicted of contravening section 82(1)(a) of The Road and Transportation Act 22 of 1999 as amended – driving under the influence of intoxicating liquor, committed during the period of suspension.

And 24 (twenty four) months imprisonment of which 24 (twenty four) months is suspended for a period of 5 (five) years on the following conditions: 1. On the condition that the accused is not convicted of contravening section 82(1)(a) of The Road and Transportation Act 22 of 1999 as amended – Driving under the influence of intoxicating liquor, committed during the period of suspension.”

[3] The above sentence is confusing and on that basis it cannot be allowed to stand.

[4] In the result I make the following order:

The conviction is confirmed.

The sentence is set aside and substituted with the following:

N\$10 000 or in default of payment (24) twenty four months imprisonment wholly suspended for a period of five years on condition that the accused is not convicted of driving under the influence of alcohol in contravention of section 82(1)(a) of The Road and Transportation Act 22 of 1999 as amended, committed during the period of suspension.

The sentence is antedated: 21 January 2016.

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A M SIBOLEKA  
Judge  
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D N USIKU

Judge