

**REPUBLIC OF NAMIBIA**

NOT REPORTABLE



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
APPEAL JUDGMENT**

**CASE NO: CA 125/2016**

In the matter between:

**KIEWIET PLAATJIES**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Plaatjies v S* (CA 125/2016) [2017] NAHCMD 74 (13 March 2017)

**Coram:** SIBOLEKA J and USIKU J

**Heard on:** 17 February 2017

**Delivered on:** 13 March 2017

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**Flynote:** Criminal law: Appeal sentence; – time frame per rule 67(1) of the Magistrate’s Court Act – appeal court not a forum of first instance to hear mitigating factors – misdirection’s either on the law or facts by the sentencing court must exist for an appeal to succeed. The appeal against sentence is dismissed.

**Summary:** The appellant, a South African citizen, has been a truck driver for 16 years, shuttling between Johannesburg and Windhoek. At the time of the incident he was found with a licensed 9mm pistol and 200 grams of methcathinone valued at N\$100 000.00 at Gobabis Trans Kalahari Road without import permits authorizing him to bring the items into Namibia. He was sentenced to six years on the dependence producing substance and N\$6 000 or in default of payment 18 months imprisonment for the firearm. He now appeals against the two sentences.

Held: The sentences are in accordance with justice. The appeal is dismissed.

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**ORDER**

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In the result I make the following order:

The appeal against sentence is dismissed.

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**APPEAL JUDGMENT**

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SIBOLEKA J (USIKU J concurring):

[1] The then legally represented appellant appeared in the Magistrate’s Court, Gobabis on charges of dealing in dependence producing substances to wit 200 grams of methcathinone valued at N\$100 000.00 in contravention of section 2(a)

read with sections 1, 2(i) and or 2(ii), 8, 10, 14 and part 1 of the schedule of the Act and of importing a firearm into Namibia in contravention of section 22(1)(a) read with section 1, 23; 38(c)(i) of the Arms and Ammunition Act 7 of 1996 as amended. He pleaded guilty in terms of section 122(2) of The Criminal Procedure Act, 51 of 1977, was convicted and sentenced as follows:

- a. Six years on the importation of the dependence producing substance and N\$6 000 or 18 months imprisonment on the 9mm pistol respectively. He is now appealing against the two sentences.

[2] The appellant had already applied for a legal aid counsel but the process had not yet been finalized at the time of the hearing of this matter. He elected to discontinue with the application and instead to prosecute the appeal in person. The request was granted.

[3] The documents filed of record shows that he filed his notice of appeal 29 days out of time and no reasons for the delay have been furnished. The appeal stands to be dismissed on the basis of the above failure alone, and worse so, given the fact that the appellant was legally represented during the trial.

[4] The respondent's counsel correctly stated that the trial court took into consideration all the appellant's personal circumstances: that he was a first offender, guilty plea, an indication of remorse. The appellant is married and has three children. He was in custody for two months at the time of sentencing; was employed, and fully co-operated with the police. He was promised N\$2 500 for transporting the dependence producing substance into Namibia, thereby assisting in the chain of dealing in such substances.

[4.1] The respondent's counsel stated further that it was a substantial quantity of drugs, and a very serious offence. Although the drugs got destroyed after the trial that did not diminish the seriousness of the offence. Families are destroyed

by these drugs, precious resources are put in place to fight these offences. The drug is highly addictive. It was not on record whether this was the appellant's first import of these substances. Society needs protection from drugs. All above factors were taken into account by the trial court during the sentencing process.

[5] It is my considered view that there are no grounds of appeal showing how the trial Court misdirected itself during the sentencing process. As foretasted the appellant has instead repeated the above mitigating circumstances which were already placed before the sentencing court and appropriately taken into account.

[6] In my view there is no legal basis entitling this court to interfere with the two sentences imposed on the appellant.

[7] In the result, the appeal against sentence is dismissed.

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A M SIBOLEKA  
Judge

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D N USIKU  
Judge

APPEARANCES

APPELLANT: In Person

RESPONDENT: Mr M L Olivier  
Office of the Prosecutor-General, Windhoek