

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION

JUDGMENT

CR No: 01/2018

In the matter between

THE STATE

v

JACOBUS VAN NIEKERK

ACCUSED

HIGH COURT MD REVIEW CASE NO 1434/2017

Neutral citation: *S v Van Niekerk* (CR 01/2018) [2018] NAHCMD 7 (26 January 2018)

CORAM: NDAUENDAPO J *et* LIEBENBERG J

DELIVERED: 26 January 2018

ORDER

1. The conviction is confirmed.
2. The sentence is set aside and substituted with the following sentence:
N\$1 000 or three (3) months' imprisonment.
3. The sentence is antedated to 15 August 2017.

JUDGMENT

LIEBENBERG J: (Concurring NDAUENDAPO J)

[1] The accused was convicted of assault¹ in terms of s 112 (1)(a) of the Criminal Procedure Act, 1977 and sentenced to a fine of N\$ 1 000 or 3 months' imprisonment, plus a further 6 months' imprisonment, wholly suspended on condition of good behaviour.

[2] When the matter came on review a query was directed to the presiding magistrate to explain whether the additional term of six months' imprisonment, imposed as a suspended sentence, was proper, in view of the court having convicted in terms of s 112 (1)(a).

[3] From the reasons provided it is evident that the magistrate is not acquainted with the provisions of s 112 (1)(a) of the Criminal Procedure Act, which provides that where the accused pleads guilty and the presiding magistrate is of the opinion that the offence does not merit *punishment of imprisonment or any other form of detention without the*

¹ Read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

option of a fine exceeding N\$6 000, the court may convict on the mere plea of guilty and in terms of subsection (a)(i) impose any *competent sentence, other than imprisonment* or any other form of detention *without the option of a fine*.

[4] In the present instance the court, in addition to the fine imposed, sentenced the accused to a further period of six months' imprisonment without the option of a fine, the latter thus rendering the sentence incompetent. In view thereof, the sentence cannot be permitted to stand.

[5] In the result, it is ordered that:

1. The conviction is confirmed.
2. The sentence is set aside and substituted with the following sentence:
N\$1 000 or three (3) months' imprisonment.
3. The sentence is antedated to 15 August 2017.

J C LIEBENBERG

JUDGE

G N NDAUENDAPO

JUDGE