

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 2/2018

In the matter between:

THE STATE

v

SEBULON PATRICK ISAACS

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1461/2017)

Neutral citation: *S v Isaacs* (CR 2/2018) [2018] NAHCMD 8 (29 January 2018)

Coram: USIKU, J and UNENGU, AJ

Delivered: 29 January 2018

Flynote: Criminal Procedure – Review – Plea – Guilty – Conviction in terms of s 112(1)(a) of the Criminal Procedure Act 51 of 1977 – Magistrate cannot impose direct imprisonment without an option of a fine no matter whether wholly suspended or not – Sentence is incompetent.

Summary: Criminal Procedure. The accused was charged with, convicted and sentenced for possession of potentially dangerous and dependence producing drugs

on two counts following the provisions of s 112(1)(a) of the Criminal Procedure Act 51 of 1977. When sentencing the accused, the learned magistrate imposed three months imprisonment on each count which he suspended for a certain period on condition that the accused is not found guilty of the same offences during the period of suspension on top of sentences of fines already imposed. Magistrates should take note that when an accused pleads guilty to an offence and the magistrate elects to dispose off the matter in terms of s 112(1)(a), no imprisonment without an option of a fine must be imposed and no fine exceeding N\$6 000 should be passed. In the present review matter, the direct imprisonment sentences are set aside.

ORDER

1. The convictions of both counts 1 and 2 are confirmed.
 2. The fine of N\$1000 or three months imprisonment on each count is confirmed.
 3. 'The further three months imprisonment on each count wholly suspended for a period of five years on the condition that accused is not convicted of the offence of possession of potentially dangerous dependence producing drugs committed during the period of suspension' imposed by the learned magistrate, is set aside.
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REVIEW JUDGMENT

UNENGU, AJ (USIKU, J concurring):

[1] This is a review matter submitted following the provisions of s 302 of the Criminal Procedure Act¹ (the CPA).

[2] The accused who opted to defend himself in the matter was charged with the offences of count 1: Dealing in potentially dangerous dependence producing drugs in

¹ Act 51 of 1977.

the main charge and alternatively possession of the aforesaid dangerous dependence – producing drugs, namely 5 ½ methaqualone tablets worth N\$ 365.00. Count 2: possession of dependence – producing substance, namely 27 grams of pure cannabis with a value of N\$81.00.

[3] The accused pleaded guilty to the alternative count of count 1 and guilty to count 2, was convicted as such pursuant to the provisions of s 112 (1)(a) of the CPA and sentenced as follows:

'In respect of alternative to count 1 N\$1000 or three months imprisonment on count 1 (sic) and further three months imprisonment which is wholly suspended for a period of five years on the condition that the accused is not convicted of the offence of possession of potentially dangerous dependence producing drugs committed during the period of suspension'.

A similar sentence was imposed on count 2.

[4] On review, I queried the learned magistrate to justify the further sentence of three months imprisonment imposed on each count additional to the fines of N\$ 1000 or three months imprisonment passed on each count while the matter was disposed off in terms of s 112(1)(a).

[5] As expected and as a custom of this magistrate, thinking he was thick in law, he responded and said seeing that the matter was disposed off in terms of s 112(1)(a), the aim is for the accused to pay a fine and if indeed he pays the fine, has it in mind that there is a further suspended sentence imposed intended to have the effect of deterrence, hanging like the sword of Hercules (sic) just like when a sentence is imposed and part of it suspended. The answer does not make sense at all.

[6] The query addressed to the learned magistrate invited him to read s 112(1)(a) before responding to it. Had the learned magistrate taken the trouble of acquainting himself with the provisions of s 112(1)(a), he would have learned that any punishment of imprisonment or any other form of detention without the option of a fine, is prohibited by s 112(1)(a) therefore, the learned magistrate acted outside the law in respect of the suspended three months imprisonment on each count.

[7] Having said that, the suspended sentence of three months imprisonment on counts 1 and 2 is incompetent and therefore should not be allowed to stand. Other

than that, the conviction on both counts and the sentences of imprisonment with options of fines are in accordance with justice.

[8] In the result the following order is made:

1. The convictions of both counts 1 and 2 are confirmed.
2. The fine of N\$1000 or three months imprisonment on each count is confirmed.
3. 'The further three months imprisonment on each count wholly suspended for a period of five years on the condition that accused is not convicted of the offence of possession of potentially dangerous dependence producing drugs committed during the period of suspension' imposed by the learned magistrate, is set aside.

P E UNENGU
Acting Judge

D USIKU
Judge