

**'ANNEXURE 11'**

**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b> <i>The State v John Joshlyn Isaack</i>	<b>Case No:</b> CR 16/2020
<b>Heard before:</b> Honourable Ms Justice Usiku Honourable Mr Justice Unengu	<b>Division of Court:</b> Prison Division
<b>Neutral citation:</b> <i>S v Isaack</i> (CR 16/2020) [2020] NAHCMD 105 (19 March 2020)	<b>Delivered on:</b> 19 March 2020
<b>The order:</b>  a) The conviction and sentence are hereby set aside.  b) The matter is remitted back to the Magistrate for the district of Luderitz to question the accused in terms of the provisions of s 112(1) (b) of the Criminal Procedure Act 51 of 1977 properly and thereafter deal with the matter in accordance with the law.  c) In the event that the accused is convicted after proper questioning as indicated above, the learned Magistrate, when sentencing the accused, should consider the period of imprisonment or part thereof (if any) served by the accused.	
<b>Reasons for order:</b>	
UNENGU AJ (concurring USIKU J)  [1] This is a review matter submitted following the provisions of s 302 read with ss 303 and 304 of the Criminal Procedure Act 51 of 1977.  [2] The accused was charged with assault with intent to do grievous bodily harm read with the provisions of the Domestic Violence Act 4 of 2003.  [3] He pleaded guilty to the charge, questioned by the Magistrate in terms of s 112(1) (b) of the Criminal Procedure Act, convicted and was sentenced with a fine of N\$4000	

(four thousand Namibia Dollars) or 12 (twelve) months imprisonment conditionally suspended as whole for a period of five years.

[4] When submitted before me for review purpose, I found the proceedings not to be in accordance with justice because the questioning by the Magistrate, although he convicted the accused of the crime of assault with intent to do grievous bodily harm read with the provisions of the aforesaid Domestic Violence Act, did not cover all the essential allegations contained in the charge sheet to which he had pleaded guilty.

[5] When queried why he had convicted the accused of the crime as charged instead of assault common, the Magistrate conceded that it was a mistake on his part. I agree.

[6] That being the case, the conviction and sentence imposed by the Magistrate will be set aside and the matter sent back to the same Magistrate to properly question the accused in terms of s 112 (1) (b) of the Criminal Procedure Act.

<b>D N USIKU</b> <b>JUDGE</b>	<b>E P UNENGU</b> <b>ACTING JUDGE</b>