

'ANNEXURE 11'

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Albertus Allies Vries</i>	Case No: CR 42/2020
Heard before: Honourable Ms Justice Usiku Honourable Mr Justice Unengu	Division of Court: Prison Division
Neutral citation: <i>S v Vries</i> (CR 42/2020) [2020] NAHCMD 249 (25 June 2020)	Delivered on: 25 June 2020
HIGH COURT MAIN DIVISION REVIEW REF NO. 679/2020)	
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The order: a) The proceedings appear to be in accordance with justice and are to be confirmed. b) The conviction is confirmed as well as the sentence imposed.	
Reasons for order: USIKU J (concurring Unengu AJ) [1] This matter was submitted for review before me, in terms of s 302 of the Criminal Procedure Act 51 of 1977. [2] The accused person was charged with the crime of Housebreaking with intent to steal. It must be made clear that the offence is housebreaking with " <u>intent to steal and theft</u> ". [3] The charges were read with the provision of the Domestic Violence Act 3 of 2004. I find that to be very unusual, as theft does not necessarily constitute violence.	

[4] After the accused was questioned in terms of s 112(1) (b), the learned magistrate still proceeded to convict the accused on a charge of housebreaking with intent to steal read with the provisions of the Domestic Violence Act 3 of 2004.

[5] I queried the learned magistrate whether the accused could not have been convicted of the offence of theft after he had admitted that he took the items in order to go and sell them and had no permission to do so.

[6] Accused had admitted to having used a stone to break open the window further and had gained entrance through the window. Hence the offence of housebreaking with intent to steal and theft was completed.

[7] The magistrate conceded to the fact that because accused had returned the properties stolen does not take away from the already completed act of unlawfulness, intention to gain entry coupled with the intention to steal and the actual removal of the property from its lawful owner.

[8] Accordingly the concessions made by the learned magistrate are in order.

- a) The proceedings appear to be in accordance with justice and are confirmed.
- b) The conviction is confirmed as well as the sentence imposed.

D N USIKU JUDGE	E P UNENGU ACTING JUDGE