

'ANNEXURE 11'

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Piet Gomaseb</i>	Case No: CR 43/2020
Heard before: Honourable Ms Justice Usiku Honourable Mr Justice Unengu	Division of Court: Prison Division
Neutral citation: <i>S v Gomaseb</i> (CR 43/2020) [2020] NAHCMD 250 (25 June 2020)	Delivered on: 25 June 2020
HIGH COURT MAIN DIVISION REVIEW REF NO. 745/2020)	
Neutral citation: <i>S v Gomaseb</i> (CR 43/2020) [2020] NAHCMD 250 (25 June 2020)	
The order: a) The conviction and sentence are set aside and the matter is referred back to the same learned magistrate in order to proceed with the trial and should the learned magistrate not be available, another magistrate can deal with the matter further in accordance with the law. b) In the event of a conviction, the magistrate must consider the period of incarceration the accused person has served so far.	
Reasons for order: USIKU J (concurring Unengu AJ) [1] The matter came before us on Review in terms of s 302 of the Criminal Procedure Act 51 of 1977. [2] The accused was charged with the offence of Housebreaking with intent to steal and	

theft. He was subsequently convicted and sentenced to three years imprisonment of which one year imprisonment was suspended for five years on condition that accused is not convicted of the offence of housebreaking with intent to steal and theft, committed during the period of suspension.

[3] It was a s 112(1) (b) plea of guilty.

[4] I directed a query to the learned magistrate as to whether he could have been satisfied that accused had admitted to all elements of the offence of housebreaking with intent to steal and theft when the accused indicated 'that he did not know what was used to open the door, and further that he went to look out for people and when he returned the door was open, and he then took something that look like money in the plastic, meat and all those things'.

[5] The learned magistrate responded to my query as follows:

"The court has questioned accused person with regards to the breaking in, even though he indicated that he was with another person and had tools to break in, accused found the shop closed and he went to look out for on-coming people while the other person broke in. He thereafter also went in and stole some items.

It did not come to my mind at that moment that accused did not break into the shop himself but only acted as watch person before going in after the place was already broken into. Thus the court could not have been satisfied that he admits to all the elements of the offence of housebreaking with intent to steal and theft."

[6] Since the magistrate have conceded that he indeed could not have been satisfied. The procedure was to invoke the provisions of s 113 of the Criminal Procedure Act 51 of 1977 and proceed with a trial.

[7] That not having been done, I am of the view that the proceedings in this case appear to me not to be in accordance with justice and cannot therefore be confirmed.

a) The conviction and sentence are set aside and the matter is referred back to the same learned magistrate in order to proceed with the trial and should the learned magistrate not be available, another magistrate can deal with the matter further in accordance with the law.

b) In the event of a conviction, the magistrate must consider the period of incarceration the accused person has served so far.

D N USIKU JUDGE	E P UNENGU ACTING JUDGE