

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT

Case no: CR 110/2019

In the matter between:

THE STATE

and

MARKUS DRIEDMOND

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 1753/2019)

(MAGISTRATE SERIAL NO. 53/2019)

Neutral citation: *S v Driedmond* (CR 110/2019) [2020] NAHCMD 6 (20 January 2020)

Coram: MILLER AJ AND PARKER AJ

Delivered: 20 January 2020

Flynote: Criminal law – Accused was charged and convicted on two separate charges of a contravention of Section 2(b) of Act 41 of 1971, namely possession of prohibited dependence producing substance, namely cannabis and methaqualone which are different substance – What they have in common is that both are prohibited dependence producing substance – Section 2(b) relates to possession of

prohibited dependence producing substance and not possession of cannabis or methaqualone – therefore a single crime is committed.

Summary: Accused charged and convicted on count 1 and 2 of possession of prohibited dependence producing substance, namely methaqualone and 2 cannabis respectively. Both substance are listed as prohibited dependence producing substance, the possession whereof constitutes a contravention of section 2(b) of Act 41 of 1971.

Held: The fact both substance are different substance is correct, what they have in common is that both are prohibited dependence producing substances.

Held: Section 2(b) relates to possession of prohibited dependence producing substance and not possession of cannabis or methaqualone. Therefore a single crime is committed.

Held: The conviction on count 1 is altered that the accused was in possession of both cannabis and methaqualone.

Held: In respect of Count 1 the accused is sentenced to a fine of N\$5.000 or 12 months imprisonment of which N\$3 000 or 5 months' are suspended for 5 years on condition the accused is not convicted of a contravention of Section 2(b) of Act 41 of 1971 committed during the period of suspension.

ORDER

In the result I make the following orders:

1. The conviction on Count 1 is altered to reflect that the accused was in possession of both cannabis and methaqualone.
2. The conviction and sentence on Count 2 are set aside.
3. In respect of Count 1 the accused is sentenced to a fine of N\$5 000 or 12 months' imprisonment of which N\$3 000 or 5 months' are suspended for 5

years on condition the accused is not convicted of a contravention of Section 2(b) of Act 41 of 1971 committed during the period of suspension.

REVIEW JUDGMENT

MILLER AJ (PARKER AJ concurring):

[1] This matter came before me on review.

[2] The accused was charged with and convicted on two separate charges of a contravention of Section 2(b) of Act 41 of 1971.

[3] In Count 1 it was alleged that on 13 July 2018 the accused was in possession of a prohibited dependence producing substance namely methaqualone.

[4] In Count 2 it was alleged that on 13 July 2018 the accused was in possession of a prohibited dependence producing substance namely cannabis.

[5] The evidence which the magistrate accepted establishes that on 13 July 2018 certain members of the Namibian Police found the accused, amongst others, at certain premises in Keetmanshoop. The accused was searched and cannabis was found in his possession as well as a crushed tablet which the accused had in his hand. The crushed tablet was subsequently analyzed by a forensic expert and was found to contain methaqualone.

[6] Both those substances are listed in Part 1 of the Schedule of Act 41 of 1971 as prohibited dependence producing substances, the possession whereof constitutes a contravention of Section 2(b) of Act 41 of 1971.

[7] I raised with the magistrate the issue whether on the facts there was not a duplication of convictions. In response the magistrate stated that the substances are different from one another and for that reason may be charged as separate offences.

[8] The fact that cannabis and methaqualone are different substances is undoubtedly correct. What they have in common though is the fact that both are prohibited dependence producing substances. The evidence established that the accused was in possession of prohibited dependence producing substances at the same time and place. Section 2(b) relates to the possession of prohibited dependence producing substance as such and not possession of cannabis or methaqualone, and therefore a single crime is committed. I am fortified in my view by a decision of *S v Maasdorp en 'n Ander* 1985(4) SA 235 CC 7 where the Court came to the same conclusion.

[9] It follows that there was a duplication of convictions.

[10] In addition the conditions upon which a portion of the sentence was suspended require attention inasmuch as they should record that the accused is not convicted of a contravention of Section 2(b) of Act 41 of 1971 committed during the period of suspension. As matter stands, a portion of the sentence imposed on count 1 was suspended without reference to the conditions upon which it was suspended.

[11] In the result I make the following orders:

[11.1] The conviction on Count 1 is altered to reflect that the accused was in possession of both cannabis and methaqualone.

[11.2] The conviction and sentence on Count 2 are set aside.

[11.3] In respect of Count 1 the accused is sentenced to a fine of N\$5 000 or 12 months' imprisonment of which N\$3 000 or 5 months' are suspended for 5 years on condition the accused is not convicted of a contravention of Section 2(b) of Act 41 of 1971 committed during the period of suspension.

P J MILLER
Acting Judge

C PARKER
Acting Judge