

Case Title: <i>The State v Joan Links</i>	Case No: CR 13/2020
High Court MD Review No: 276/2020	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Lady Justice Shivute	Delivered on: 16 March 2020
Neutral citation: <i>S v Links</i> (CR 13/2020) [2020] NAHCMD 97 (16 March 2020)	
The order: <ol style="list-style-type: none"> a. The charge in count 2 is substituted with a contravention of section 2(b) of Act 41 of 1971, the unlawful possession of dependence-producing substances (methaqualone and cannabis). b. The conviction and sentence on count 1 is set aside. c. The conviction on count 2 is confirmed. d. The sentence on count 2 is confirmed. 	
Reasons for order:	
LIEBENBERG J (concurring SHIVUTE J) <ol style="list-style-type: none"> 1. This is a review in terms of s 302 (1) of the Criminal Procedure Act (the CPA) as amended. 2. The facts of this matter are that the accused was found in possession of 4 full mandrax tablets, containing methaqualone, and 12 ballies of cannabis. He was then charged with two counts for the two different substances in contravention of section 2(b) of Act 41 of 1971. 3. The accused pleaded guilty to both counts and was thereafter convicted in terms of section 112(1) (a) of the CPA on his mere plea on count 1. For count 2 he was questioned in terms of 112(1)(b) of the CPA and after the court was satisfied, he was convicted accordingly. Thereafter he was sentenced on count 1 to a fine of N\$1 000 or 3 months' imprisonment and on count 2, to a fine of 	

N\$2 000 or 6 months' imprisonment of which N\$1 000 or 3 months' imprisonment is suspended on condition of good behaviour.

4. When the matter came on review the court directed a query to the magistrate enquiring as to why '[t]he accused was charged with the same offence committed on the same day on two separate counts.... and should the accused not have been charged with one count only.'
5. The magistrate replied that she understood that one incident occurred during which two distinct substances were confirmed and she relied on *S v Dreyer*¹ to convict the accused on two separate charges. In the *Dreyer* case it was held that an accused found in possession of different substances (as in this instance), the accused should be charged separately for each substances.
6. It should be pointed out that the position adopted in *Dreyer* has been changed by the full bench decision in *S v Rooi*² where the court held that if an accused is simultaneously found with different substances i.e. cannabis and methaqualone, it constitutes one offence for reason that it is a contravention of the same section being s 2(b) of the Act namely, possession of a dependence-producing substance.³ Therefore to charge an accused on two counts would amount to a duplication of convictions.
7. In the premises, count 1 falls to be set aside and the substance possessed by the accused in that count is to be incorporated under count 2.
8. In light of the review court not vested with the power to increase any sentence on review, this court shall not interfere with the sentence imposed on count 2.

¹ CR 23/2018 NAHCMD (05 April 2018).

² 2019 (2) NR 479 (HC).

³ *Ibid* at para 12E-G.

9. In the result, it is ordered :

- a. The charge in count 2 is substituted with a contravention of section 2(b) of Act 41 of 1971, the unlawful possession of dependence-producing substances (methaqualone and cannabis).
- b. The conviction and sentence on count 1 is set aside.
- c. The conviction on count 2 is confirmed.
- d. The sentence on count 2 is confirmed.

J C LIEBENBERG
JUDGE

N N SHIVUTE
JUDGE