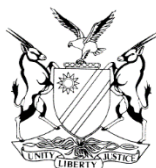


PRACTICE DIRECTIVE 61  
REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT

<b>Case Title:</b> <i>The State v Ricardo Morne Reedt</i> <i>The State v Joas Jan Mattys</i>	<b>Case No:</b> CR: 25/2022
<b>High Court MD Review No:</b> 400/2022	<b>Division of Court:</b> Main Division
<b>Heard before:</b>  Judge Liebenberg <i>et</i> Judge January	<b>Delivered on:</b>  05 April 2022
<b>Neutral citation:</b> <i>S v Reedt</i> (CR 25/2022) [2022] NAHCMD 171 (05 April 2022)	
<b>The order:</b>  <ol style="list-style-type: none"><li>1. In respect of accused no's 2 and 5, the convictions and sentences are set aside.</li><li>2. In terms of s 312 of Act 51 of 1977 the matter is remitted to the presiding magistrate with the direction to question the accused persons in terms of s 112(1)(b) in order to determine what their intention was at the time they gained access to the complainant's property.</li><li>3. When sentencing the accused persons, the court should take into consideration the portion of the sentence the accused persons had already served.</li></ol>	

**Reasons for order:**

Liebenberg, J ( concurring January, J)

[1] This is a review matter which came before me in terms of section 302 (1) and section 303 of the Criminal Procedure Act 51 of 1977 (the CPA).

[2] The accused persons in this matter appeared before the Magistrate's Court in the district of Aranos, as accused no. 2 and 5 respectively. They faced a charge of Housebreaking with intent to steal and theft. After they pleaded guilty, the court *a quo* invoked s 112(1)(b) of the CPA and subsequently convicted and sentenced them to 10 months' imprisonment each.

[3] A query was directed to the magistrate as to whether the convictions and sentences are in accordance with justice, as the court *a quo* omitted to question the accused persons on their *intention* at the time of entering the complainant's premises. The magistrate in her response correctly conceded that the element of intention was not covered and, therefore, asked for the convictions and sentences to be set aside and for the matter to be remitted.

[4] It is trite that questioning in terms of s 112(1)(b) has a twofold purpose, namely to establish the factual basis of the plea of guilty and the legal basis of such plea. The court must conclude whether the legal requirements for the commission of the offence have been met from the accused's admissions. These include questions of unlawfulness, *actus reus* and *mens rea*. The court *a quo* however omitted to question the accused on what his intent was at the time of the break in.<sup>1</sup>

[5] The state alleges that the accused persons intention at the time they entered the storage garage was to steal, thus this is an essential element of the offence which was

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<sup>1</sup> S v *Sindimba* (CR 55/2021) [2021] NAHCMD 287 (09 June 2021).

not canvased by the magistrate's questioning. Despite the fact that the accused persons admitted to have unlawfully taken the goods from the premises without permission, the intention at the time of entering the complainant's storage garage must also be established.

[6] Consequently, I am not satisfied that the accused persons admitted all the elements of the offence; thus their convictions and sentences cannot be allowed to stand.

[7] In the result the following order is made:

1. In respect of accused no's 2 and 5, the convictions and sentences are set aside.
2. In terms of s 312 of Act 51 of 1977 the matter is remitted to the presiding magistrate with the direction to question the accused persons in terms of s 112(1) (b) in order to determine what their intention was at the time they gained access to the complainant's property.
3. When sentencing the accused persons, the court should take into consideration the portion of the sentence the accused persons had already served.

<b>J C LIEBENBERG</b> <b>JUDGE</b>	<b>H JANUARY</b> <b>JUDGE</b>