

REPUBLIC OF NAMIBIA



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

Case Title: The State v Heinrich Ueitele The State v Martins Berendt The State v David Petrus	Case No: CR 53/2022
High Court Review No. Ref No.: 418/2022 Ref No.: 423/2022 Ref No.: 424/2022	Division of Court: High Court Main Division
Heard before: The Honourable Lady Justice Usiku <i>et</i> Honourable Lady Justice Claasen	Delivered on: 10 June 2022
Neutral citation: <i>S v Ueitele; S v Berendt; S v Petrus</i> (CR 53/2022) [2022] NAHCMD 292 (10 June 2022)	
The following orders are made:	

1. In *State v Heinrich Ueitele*, the accused is sentenced on Count 1 to 36 months imprisonment and on Count 2 to 24 months imprisonment, the sentence on count 2 is ordered to run concurrently with the sentence on Count 1. This sentence is ante-dated to 24 February 2022.
2. In *State v Martins Berendt*, the sentence against the accused is set aside and substituted with the following sentence: 24 months' imprisonment. This sentence is ante-dated to 4 March 2022.
3. In *State v David Petrus*, the accused is sentenced on Count 1 to 12 months imprisonment and on Count 2 to 12 months imprisonment, the sentence on count 2 is ordered to run concurrently with the sentence on Count 1. This sentence is ante-dated to 24 February 2022.

Reasons for order:

[1] The cases cited above came before this court on automatic review in terms of s 302(1) of the Criminal Procedure Act 51 of 1977. These cases originated from the same Magistrates' Court and were presided over by the same learned Magistrate.

[2] This court directed a two-pronged queries to the learned magistrate, firstly whether or not the sentences are not too harsh given the fact that the accused persons were all first time offenders who tendered guilty pleas, and secondly whether it would not be more appropriate that the sentences be ordered to run concurrently (where applicable).

[3] The magistrate's responses were as follows:

3.1. In respect of *The State v Heinrich Ueitele*:

'1. Considering the prevalence of stock theft in the district, the court was of the view that the

sentence imposed is balanced and appropriate.

2. Further the court was guided by the penalty provisions and authorities such as *S v Tjiveze* case no; CR27/2013 in relation to the prescribed minimum sentences.

3. The court took note of the amount of stock stolen and the value and on that basis deemed the sentence appropriate...'

3.2. In respect of *The State v Martins Berendt*:

'1. Considering the prevalence of stock theft in the district, the court was of the view that the sentence imposed is balanced and appropriate.

2. Further the court was guided by the penalty provisions and authorities such as *S v Tjiveze* case no; CR27/2013 in relation to the prescribed minimum sentences.

3. The court took note of the previous conviction against the accused, which is also that of stock theft, and on that basis deemed the sentence appropriate.

4. The court further considered the amount of stock stolen and the value involved...'

3.3. In respect of *The State v David Petrus*:

'1. The offences of assault with intent to do grievous bodily harm are very prevalent in the district of Gobabis, what is further aggravating is the fact that both counts are read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003. The imposition of the sentence in view of the offence itself and its prevalence was warranted as means of adequate deterrence.

2. In view of the circumstances under which the offence took place, it is evident that the complainant herein suffered injuries, a stab wound as well as a fracture to her arm which was further aggravating...'

[4] It is apparent from the learned magistrate's responses that the sentences imposed were meant to deter the accused and/or any other person from committing the same or similar offence. However, in our view the sentences are shockingly inappropriate considering the circumstances that the accused were first time offenders who tendered guilty pleas.

[5] In *S v Ilukena*¹ Unengu AJ with Usiku J (concurring) had the following to say:

'...It is so that theft of stock is a serious crime for which a stiff punishment has to be meted out to deter the accused and would be offenders from committing the crime. But still, it is a principle of law to

¹ *S v Ilukena* (CR 76/2019) [2019] NAHCMD 415 (16 October 2019).

individualize sentences. Punishment should not only fit the crime committed but also the criminal, be fair to the State and the accused and be blended with a measure of mercy. The convicted person should not be punished to the point of being broken.²

[8] Holms AJ, when dealing with the element of mercy³ at 614, declared as follows:

"The element of mercy, a hallmark of a civilised and enlightened administration, not be overlooked, lest the court be in danger of reducing itself to the plane of criminal Mercy is an element of justice itself."

[9] In this matter, the learned magistrate overemphasized the seriousness and the prevalence of the crime at the expense of the accused person's personal circumstances and mitigating factors, overlooked the element of mercy which is an element of justice in itself and punished the accused to the point of breaking him. To impose an effective four (4) years imprisonment on a first offender who confessed his guilt of the crime, is in my view, too harsh and induces a sense of shock. No reasonable minded member of society would celebrate the sentence meted out on the accused as appropriate.'

[6] It is against this backdrop, not only relating to stock theft but would include any crime that is a cause for concern to the society, such as domestic violence, that the court finds the sentences imposed to be too harsh.

[7] In the result, the sentences are set side and substituted with the following sentences:

7.1. In *State v Heinrich Ueitele*, the accused is sentenced on Count 1 to 36 months imprisonment and on Count 2 to 24 months imprisonment, the sentence on count 2 is ordered to run concurrently with the sentence on Count 1. This sentence is ante-dated to 24 February 2022.

7.2. In *State v Martins Berendt*, the sentenced against the accused is set aside and substituted with the following sentence: 24 months' imprisonment. This sentence is ante-dated to 15 February 2022.

² *S v Sparks* 1972 (3) SA 396 (A) 410H.

³ *S v V* 1972 (3) SA 611 (A).

7.3. In *State v David Petrus*, the accused is sentenced on Count 1 to 12 months imprisonment and on Count 2 to 12 months imprisonment, the sentence on count 2 is ordered to run concurrently with the sentence on Count 1. This sentence is ante-dated to 4 March 2022.

D USIKU JUDGE	C CLAASEN JUDGE