REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: *S v Bonny Titus*	**CR:** 64/2022
High Court MD Review No: 1941/2021	**Division of Court** Main Division
Heard before: Judge Shivute *and* Judge January	**Delivered on:** 10 August 2022

Neutral citation: *S v Titus* (CR 64/2022) [2022] NAHCMD 398 (10 August 2022)

The order:

The sentence of 'thirty six months' imprisonment of which twelve months are suspended for a period of five years on condition that you are not convicted of dealing in cannabis committed during the suspended portion of your sentence' is set aside and substituted with a sentence of:

thirty six months' imprisonment of which twelve months are suspended for five years on condition that the accused is not convicted of contravening s 2*(a)* or 2*(b)* of Abuse of Dependence Producing Substance and Rehabilitation Centres Act 41 of 1971 - Dealing in or possession of cannabis, committed during the period of suspension.

Reasons for order:

JANUARY J (SHIVUTE J concurring):

[1]   This is a review matter in terms of s 302(1) of the Criminal Procedure Act 51 of 1977, as amended (the CPA).

[2]   The accused appeared in the District Court of Katutura for contravening s 2*(a)* read with s 1, 2(i) and or 2(iv), 7, 8, 10, 14 and Part 1 of the Schedule Abuse of Dependence Producing Substance and Rehabilitation Centres Act 41 of 1971, as amended – Dealing in cannabis. He pleaded guilty, was questioned in terms of s 112(1) *(b)* of the CPA and convicted. The conviction is in accordance with justice.

[3]   The accused was sentenced to: '36 months' imprisonment of which twelve months are suspended for a period of five years on the condition that you are not convicted of dealing in cannabis committed during the suspended portion of your sentence'. The magistrate further explained to the accused that he should not find himself in any court on a charge of possession or dealing in cannabis. The condition of suspension of this sentence is nonsensical and not in accordance with justice. The suspended portion of the sentence is twelve months. As it stands, it means that the accused should not be convicted for dealing in cannabis within the period of twelve months. On the other hand, twelve months of the sentence of thirty six months are suspended for a period of five years.

[4]   I have decided not to obtain a statement from the magistrate to explain the sentence as it is clearly not in accordance with justice and wrong. In addition, the J15 charge sheet reflects, where the sentence is supposed to be reflected: 'Charges separated'. The review cover sheet, on the other hand, reflects the sentence: 'Accused one sentenced to thirty six months imprisonment of which twelve months is suspended for five years on condition that accused is not convicted of possession of dependence

producing substances committed during the period of suspension'.

[5]   It is evident that the magistrate did not proofread the record of proceedings before it was submitted for review. Whereas the accused was convicted for dealing in cannabis, it is incomprehensible why the condition of suspension refers only to possession of cannabis on the review cover sheet and clearly differs from the sentence imposed during the sentencing as reflected in the record of proceedings. All this reflects despite the explanation to the accused, that he should not be convicted of either possession of, or dealing in cannabis.

[6]   In the result:

The sentence of 'thirty six months' imprisonment of which twelve months are suspended for a period of five years on the condition that you are not convicted of dealing in cannabis committed during the suspended portion of your of your sentence' is set aside and substituted with a sentence of:
thirty six months imprisonment of which twelve months are suspended for five years on condition that the accused is not convicted of contravening s 2*(a)* or 2*(b)* of Act 41 of 1971 - dealing in or possession of cannabis, committed during the period of suspension.

H C JANUARY **JUDGE**	**N N SHIVUTE** **JUDGE**