

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PD 61

Case Title: <i>The State v Simon Engelbrecht</i>	Case No: CR 101/2022
	Division of Court: High Court Main Division
Heard before: Honourable Justice Claasen Honourable Justice Usiku	Delivered on: 23 September 2022
Neutral citation: <i>S v Engelbrecht</i> (CR 101/2022) [2022] NAHCMD 504 (234 September 2022)	
Order: <ol style="list-style-type: none">1. The conviction and sentence is set aside.2. The matter is remitted with a direction that it be dealt with afresh from the stage of plea.3. In the event of a conviction, the sentencing court must have regard to the sentence already served in this matter.	
CLAASEN, J (USIKU J concurring)	

[1] The accused was charged for being in possession of a dependence producing substance, in contravention of section 2(a) read with sections 1,2(i) and or 2(ii), 8 10, 14 and Part 1 of the schedule of the Abuse of Dependence Producing Substances and Rehabilitations Centres Act 41 of 1971 as amended, to wit 13 and a quarter tablets that contain methaqualone to the value of N\$ 650. He was convicted, as charged, in terms of s 112(1)(a) of the Criminal Procedure Act No 51 of 1977 as amended (the CPA) and was sentenced to pay a fine of N\$ 2500 or 12 month's imprisonment.

[2] When the matter appeared on automatic review a two pronged query was raised. Firstly, the court a quo was asked about the propriety of disposing of the matter in terms of s 112(1)(a) of the CPA. Secondly, the court a quo was asked that about the suitability of the sentence after having utilised s 112(1)(a) of the CPA and the ratio between the fine and the term of imprisonment.

[3] The magistrate duly replied and conceded both points. These are concessions properly made. In *S v Skrywer*¹ it was held that matters dealing with dependence producing drugs in contravention of Act 41 of 1971 are invariably serious in nature regardless of the weight of the substance. It was emphasised that that these offences are not and cannot be properly regarded as minor because of their potentially deleterious consequences and effect on society and individual users. We are in agreement with that sentiment. On that basis the conviction is not in accordance with justice

[4] Having conceded that the sentence was also not appropriate for s 112(1)(a) of the CPA and the ratio between the fine and the imprisonment was disproportionate, the sentence is also not in order.²

[5] This court also belatedly noticed that the section under which the accused was

¹ *S v Skrywer* (CR 33/2015) [2015] NAHCMD 258 (30 October 2015).

² *S v Nyumba* (CR 31/2019)[2019] NAHCMD 97 (12 April 2019), *S v Petrus* (CR 91/2022) NAHCMD 452 (01 September 2022).

charged was wrong. The section cited in the charge refers to dealing in a dependence prohibiting substance as opposed to the offence of possession of a dependence prohibiting substance which was spelled out in the charge particulars. Since the matter will be remitted to the court a quo, this aspect is to be attended to by the prosecution.

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

1. The conviction and sentence is set aside.
2. The matter is remitted with a direction that it be dealt with afresh from the stage of plea.
3. In the event of a conviction, the sentencing court must have regard to the sentence already served in this matter.

C CLAASEN JUDGE	D USIKU JUDGE