

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION WINDHOEK
REVIEW JUDGMENT
PRACTICE DIRECTIVE 61

Case Title: The State v John Imbili	Case No: CR 111/2022
	Division of Court: Main Division
Heard before: Usiku J <i>et</i> Claasen J	Delivered on: 17 October 2022
Neutral citation: <i>S v Imbili</i> (CR 111/2022) [2022] NAHCMD 560 (17 October 2022)	
ORDER: 1. The conviction is confirmed. 2. The sentence is set aside and substituted as follows: The accused is sentenced to pay a fine of N\$1000 or 3 months' imprisonment. The sentence is backdated to 22 August 2022.	

REASONS FOR ORDER:

Claasen J (Usiku J concurring):

[1] The accused appeared in the district court of Otjiwarongo on a charge of theft of mascara valued at N\$607.84. After having questioned the accused in terms of s 112(1)(b) of the Criminal Procedure Act No 51 of 1977 (the CPA), the accused was convicted and sentenced to pay a fine of N\$ 1000 or 6 month's imprisonment.

[2] Having received the matter on automatic review the conviction is in order and will be confirmed. The same cannot be said about the sentence imposed. The review court will not address a query to the presiding magistrate as it will cause prejudice to the accused if there is a delay in time.

[3] The qualm that the review court has with the sentence is that the ratio between the fine and the imprisonment is disproportionate. In *S v Mynhard; S v Kuinab*¹ general guidelines were given for the imposition of a fine and one of these principles is that the alternative term of imprisonment should be proportionate to the fine.

[4] In considering the sentence, the magistrate was well within her discretion to afford the accused the option of a fine. Though the offence is serious in nature, the accused tendered a guilty plea at the first appearance, he was a first offender and the complainant suffered no loss as the stolen mascara was recovered. Thus, no issue arises in that regard.

[5] Conversely, we are of the view that the alternative term of imprisonment is too harsh in relation to a fine that was imposed, which makes it a disproportionate sentence. The court a quo misdirected itself in that regard and this court will adjust the sentence

¹ *S v Mynhard; S v Kuinab* 1991 NR 336.

accordingly.

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

1. The conviction is confirmed.
2. The sentence is set aside and substituted as follows:

The accused is sentenced to pay a fine of N\$1000 or 3 months' imprisonment. The sentence is backdated to 22 August 2022.

C M CLAASEN
JUDGE

D N USIKU
JUDGE