

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

Case Title: The State v Leon Erhend Calvert	Case No: CR 07/2023
High Court MD Review No: 18 /2023	Division of Court: Main Division
Heard before: Hon Judge Claasen et Hon Judge Usiku	Delivered on: 03 February 2023
Neutral citation: <i>S v Calvert</i> (CR 07 /2022) [2023] NAHCMD 28 (03 February 2023)	
The order <ol style="list-style-type: none">1. The convictions on count 1 and count 2, the sentence in respect of count 1 and the additional order are confirmed.2. The sentence on count 2 is substituted with the following sentence: Accused to pay a fine of N\$ 1000 or 3 months' imprisonment.3. The sentence is antedated to the date of sentencing 3 January 2023.	
Reasons for order:	

CLAASEN J (concurring USIKU J):

[1] In this matter the unrepresented accused appeared in the District Court at Luderitz. He was convicted on his own guilty pleas of one count of driving with an excessive breath alcohol level – contravening s 82(5)(a) read with s 1, 82(5), 82(7), 86, 89(4) of the Road Traffic and Transportation Act 22 of 1999 (RTTA) and of one count of driving without a licence in contravention of s 31(1)(a) read with s 31(2) of the RTTA.

[2] The court a quo imposed a sentence of a fine of N\$ 5000 or 10 months' imprisonment on count 1 and a fine of N\$ 1000 or 6 months' imprisonment on count 2. Furthermore the accused was barred from applying for a Learner or Driver Licence for a period of 3 months from the date of sentencing.

[3] This court is reviewing the matter without having sought a response from the magistrate concerned because sending a query and awaiting a reply will delete the outcome and cause prejudice to the accused.

[4] No issues arise in respect of both the convictions, the sentence on count 1 and the additional order made. On the other hand, the same cannot be said about the sentence on count 2.

[5] Considering that count 2 was disposed of in terms of s 112(1)(a) of the Criminal Procedure Act 51 of 1977 (the CPA), which deals with minor offences and concomitant sentences, an imprisonment term of 6 months do not strike me as one that can be regarded as a light term of imprisonment. The principle was explained in numerous review judgments,¹ which this particular magistrate has ignored.

[5] Furthermore, it is also an established principle in sentencing that when a judicial officer intends to give a fine and an alternative sentence of a period of imprisonment that the alternative imprisonment should be in proportion to the fine

¹ *S v Zauisomwe* (CR 10/2020) [2020] NAHCMD 44 (11 February 2020), *S v Nyumba* (CR31/2019) [2019] NAHCMD 97 (12 April 2019).

and the gravity of the offence.² This is not the case in the sentence on count 2, i.e. the 6 month's imprisonment term is not proportional to the fine of N\$ 1000. For that reason this court will accordingly adjust the term of imprisonment.

[6] In the result it is ordered:

1. The convictions on count 1 and count 2, the sentence in respect of count 1 and the additional order are confirmed.

2. The sentence on count 2 is substituted with the following sentence:

Accused to pay a fine of N\$ 1000 or 3 months' imprisonment.

3. The sentence is antedated to the date of sentencing 3 January 2023.

C CLAASEN	D USIKU
JUDGE	JUDGE

² *S v Dickson* CR 129/2002 unreported. delivered 2002.08.09.