

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

Case Title: <i>The State v Elias Shilongo and 2 others</i>	Case No: CR 145/2023
High Court MD Review No: 1384/2023	Division of Court: High Court, Main Division
Coram: Shivute J <i>et</i> Christiaan AJ	Delivered on: 5 December 2023
Neutral citation: <i>S v Shilongo</i> (CR 145/2023) [2023] NAHCMD 793 (5 December 2023)	
ORDER: 1. The conviction is confirmed. 2. The sentences are altered as follows: (a) Accused 1 and 2 are each sentenced to 12 months' direct imprisonment. (b) Accused 3 is sentenced to 6 months' imprisonment, wholly suspended for a period of 3 (three) years on the following conditions: (i) Accused 3 is not found guilty of the offence of robbery committed during the	

period of suspension.

(ii) That accused 3 completes life skills programme as per court order.

(iii) That accused 3 completes community service as per court order.

REASONS FOR ORDERS:

SHIVUTE J (CHRISTIAAN AJ concurring):

[1] This is a review matter which came before me in terms of section 302(1) of the Criminal Procedure Act 51 of 1977.

[2] The three accused persons appeared in the Magistrate's Court for the district of Windhoek, held at Katutura on a charge of robbery. All three accused pleaded not guilty and at the end of the trial, the court found them guilty as charged.

[3] The court proceeded to sentence the accused persons as follows:

'Accused 1 and 2: Direct imprisonment of a period of 12 (twelve) months;

Accused 3: Direct imprisonment of a period of 6 (six) months is suspended for a period of 3 (three) years on the following conditions:

1. The accused not found guilty of offence of robbery.
2. That accused completes life skills programme as per court order.
3. That accused completes community service as per court order.'

[4] The accused persons were properly convicted. However, the sentence with regard to accused 1 and 2, as well as the first condition of suspension of sentence with regard to accused 3, is vague. Accordingly, I enquired from the magistrate what he meant with the sentence in respect of accused 1 and 2. I also enquired from him on whether the first condition of suspension of sentence is not too vague. The magistrate's response

was:

' . . . I believe the correct wording in respect of point 2 of the court's query should read that the accused is sentenced to a "custodial sentence of imprisonment without the option of a fine" for the said period, and in respect of point 4, that the accused is not found guilty of the "offence" of robbery alternatively the court may correct me on the preferred wording.'

[5] The magistrate's response does not address the queries.

[6] In regard to the sentence imposed on accused 1 and 2, it is not clear whether or not the 12 months' imprisonment imposed is in respect of each of the 2 accused persons. In regard to the first condition of suspension of sentence imposed on accused 3, it must be clear to accused 3 the period during which another conviction on robbery would or might bring the suspended sentence into operation.

[7] As a result, the conviction and sentences are confirmed, however, considering the above and to remove any cause of confusion, misinterpretation or uncertainty, the sentences are altered as follows:

(a) Accused 1 and 2 are each sentenced to 12 months' direct imprisonment.

(b) Accused 3 is sentenced to 6 months' imprisonment, wholly suspended for a period of 3 (three) years on the following conditions:

(i) Accused 3 is not found guilty of the offence of robbery committed during the period of suspension.

(ii) That accused 3 completes life skills programme as per court order.

(iii) That accused 3 completes community service as per court order.

N N SHIVUTE	P CHRISTIAAN

JUDGE	ACTING JUDGE
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