

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: <i>The State v Still Katjatenya</i>	Case No: CR 15/2024
High Court Ref. No.: 221/2024	Division of Court: Main Division
Heard before: Shivute J et Christiaan J	Delivered on: 28 February 2024
Neutral citation: <i>S v Katjatenya</i> (CR 15/2024) [2024] NAHCMD 75 (28 February 2024)	
The order: <ol style="list-style-type: none">1. The conviction is set aside and substituted with that of housebreaking with intent to steal.2. The sentence is confirmed.	
Reasons for order:	
SHIVUTE J (concurring Christiaan J):	

[1] The accused in this case was charged with the offence of housebreaking with intent to commit a crime unknown to the State. The accused pleaded guilty and the magistrate proceeded to question him in terms of s 112(1)(b) of the Criminal Procedure Act 51 of 1977, as amended. During the questioning, the accused admitted that he broke into the house with the intent to steal, however, he did not manage to take anything. The court a quo found him guilty as charged and sentenced him to 12 (twelve) months' imprisonment, wholly suspended, with conditions.

[2] When the matter came before me on review, a query was directed to the presiding magistrate on why the accused was convicted as charged if he made his intention known, when he admitted that he intended to steal.

[3] In his reply to the query, the magistrate concedes that he should have convicted the accused of housebreaking with intent to steal, and requests that the conviction be amended accordingly.

[4] This concession by the magistrate is correctly made, because the accused, on the evidence, entered the house with the intent to steal.

[5] As a result, the following order is made:

1. The conviction is set aside and substituted with that of housebreaking with intent to steal.
2. The sentence is confirmed.

N N SHIVUTE
JUDGE

P CHRISTIAAN
JUDGE

