



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

CR NO.: 19/2016

In the matter between:

THE STATE

and

ANDREAS PETRUS

ACCUSED

HIGH COURT NLD REVIEW CASE REF NO: **342/2016**

Neutral citation: *The State v Petrus* (CR 342/2016) [2016] NAHCNLD 107 (14 December 2016)

Coram: CHEDA J

Delivered: 14 December 2016

Flynote: Where a judicial officer sentences an accused in more than 2 counts and the said sentences are to run one after the other, there is no need for any phrase to be added as the sentence itself means what it says.

Summary: Accused was convicted of two counts of house breaking with intent to steal and theft. He was sentenced as follows:

“Count 1: Three (3) years imprisonment

Count 2: Three (3) years imprisonment

Sentence to run cumulatively and not concurrently”

It was not necessary for the last sentence to have been added as the sentences will run one after the other.

ORDER

1. The convictions are confirmed.
2. The sentence passed on the 22 August 2016 is set aside.
3. The said sentence is substituted by the following:
Count 1: Three (3) years imprisonment
Count 2: Three (3) years imprisonment

JUDGMENT

CHEDA, J

[1] The above matter was referred to me as per the review procedure. The accused was charged with 2 counts of housebreaking with intent to steal and theft. Accused pleaded not guilty, but, was however, tried, convicted and sentenced as follows:

Sentence: Count 1: three (3) years imprisonment.

Count 2: three (3) years imprisonment.

Sentence to run cumulatively and not concurrently.

[2] There is nothing which turns on the conviction. However, it is the way the sentence is couched which gives me concern. The sentence is not clear what the learned magistrate wanted to say.

[3] The sentencing guideline is clearly laid down in section 280 (1) and (2) of Criminal Procedure Act, Act 51 of 1977 which reads thus:

“(1) When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the

case may be, to the punishment for such other offence, as the court is competent to impose.

(2) Subject to section 99 (2) of the Correctional Services Act 2012 (Act 9 of 2012) punishments referred to in subsection (1), when consisting of imprisonment, commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment must run concurrently.”

[4] This point is further clarified under the Correctional Services Act, Act 9 of 2012 which provides thus:

“Section 99(3) of the Correctional Services Act, Act 9 of 2012 provides:

(3) Where a person receives more than one sentence of imprisonment or receives additional sentences while serving a term of imprisonment, each such sentence must be served the one after the expiration, setting aside or remission of the other, unless the court specifically directs otherwise or unless the court directs that such sentences must run concurrently.”

[5] What it means, then is that where the trial court desires that the sentences run one after the other, in simple language, there is no need for an explanation as to how the sentences should be served. In *casu* it is clear that the learned trial magistrate did not intend to favour the accused with some discount in the sentence imposed, for that reason the sentences will be understood as they are without more. The sentence will thus speak for itself.

[6] In order to avoid a misunderstanding in future the following is the order of the court:

Order:

1. The convictions are confirmed.
2. The sentence passed on the 22 August 2016 is set aside.
3. The said sentence is substituted by the following:
Count 1: Three (3) years imprisonment

Count 2: Three (3) years imprisonment

M Cheda
Judge