

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI
REVIEW JUDGMENT

Case Title: <i>S v Bernard Immanuel</i>	CR NO: 3/2021 CASE NO:164/2018
	Division of Court: Northern Local Division
Heard before: Honourable Ms. Justice Salionga J et Honourable Mr. Justice Munsu AJ	Delivered on: 29 January 2021
Neutral citation: <i>S v Immanuel</i> (CR 3/2021) [2021] NAHCNLD 4 (29 January 2021)	
IT IS ORDERED THAT: <ol style="list-style-type: none">1. The convictions on both count of assault with intent to do grievous bodily harm are confirmed.2. The sentence as indicated on review sheet and typed J15 is set aside and substituted with the sentence indicated in a handwritten judgement as follows; Twenty-four (24) months imprisonment of which four (4) months imprisonment is suspended for a period of 5 years on condition that accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.3. The sentence is anteceded to 27 September 2018.	

Reasons for the above order:

SALIONGA J (MUNSU J concurring):

[1] The accused pleaded guilty to two counts of assault with intent to do grievous bodily harm and was convicted as charged. He was sentenced to 24 months imprisonment of which 4 months imprisonment is suspended for a period of 5 years on condition that accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.

[2] When the matter was received on automatic review the reviewing judge had no disquiet with the conviction. However an explanation was requested as to why the record indicates a sentence of '24 months imprisonment of which 4 months imprisonment is suspended for a period of 5 years on condition ... but the review sheets indicates that accused was sentenced to N\$5000 or 2 years imprisonment of which N\$2000 or 6 months are suspended for a period of 5 years on certain condition...'

[3] The learned magistrate in her reply conceded to have made an error and sought directives and guidance from the Honourable Reviewing Judge.

[4] It is apparent from the record that the learned magistrate certified the record without first verifying and proof-reading the record. The review sheet has to be corrected in terms of section 304 of the Criminal Procedure Act 51 of 1977 to reflect the sentence that was imposed on the accused person. In preparing this judgment I also noticed that the magistrate sentenced the accused to '24 months' imprisonment for both counts'. I understood same to mean both convictions were taken together for sentencing purposes and I am satisfied with that.

[5] In the result:

1. The convictions on both count of assault with intent to do grievous bodily harm are confirmed.

2. The sentence as indicated on review sheet and typed J15 is set aside and substituted with the sentence indicated in a handwritten judgement as follows; Twenty-four (24) months imprisonment of which four (4) months imprisonment is suspended for a period of 5 years on condition that accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.
3. The sentence is anteceded to 27 September 2018.

J T SALIONGA JUDGE	D C MUNSU ACTING JUDGE