



**NOT REPORTABLE**

CASE NO: SCR 1/2022

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**STATE**

and

**XAVIER DENTLINGER**

**Coram:** SHIVUTE CJ, HOFF JA and FRANK AJA

**Heard:** IN CHAMBERS

**Delivered:** 25 March 2022

**Summary:** This is a request for review in terms of s 16 of the Supreme Court Act 15 of 1990. The accused was on 19 March 2019 convicted by the Regional Court for attempted murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003. He was sentenced to six months imprisonment, wholly suspended on conditions of good behaviour. The accused had not served any part of his sentence when the State appealed it. The High Court set aside the sentence imposed by the Regional Court and substituted it with a sentence of seven years imprisonment, of which two years are suspended and ordered that the sentence be backdated to 19 March 2019. The legality of the sentence imposed by the High

Court was queried by the Deputy Commissioner of the National Release Board with reference to the provisions of s 282 of the Criminal Procedure Act 51 of 1977. As the High Court judges are *functus officio* and cannot correct the sentence, the matter was referred to this court with the request to correct the sentence.

This court exercises its review jurisdiction to correct the sentence of the High Court.

*Held that*, the accused having not served any part of the sentence imposed by the Regional Court, the High Court did not have the power to antedate the sentence it imposed.

*Held that*, the antedating of the sentence of the High Court on appeal from the Regional Court, where no period of imprisonment was served by the accused was contrary to the provisions of s 282 of the CPA and irregular.

*Held that*, the order of the High Court dated 3 September 2020 is corrected by deleting paragraph (c) in that the sentence be antedated to 19 March 2019.

---

**REVIEW IN TERMS OF SECTION 16 OF THE SUPREME COURT ACT 15 OF  
1990**

---

FRANK AJA (SHIVUTE CJ and HOFF JA concurring):

[1] Mr Dentlinger was convicted by the Regional Court for attempted murder, read with the provisions of the Combating of Domestic Violence Act 4 of 2003. He was sentenced to six months imprisonment, wholly suspended on conditions of good behaviour. He had served no part of this sentence when the following events occurred; the State appealed against the sentence imposed by the High Court which set aside the sentence imposed by the Regional Court and substituted it

with a sentence of seven years imprisonment, of which two years are suspended on the usual conditions and ordered that the sentence be backdated to 19 March 2019 which was the date that the Regional Court imposed its six months' suspended sentence.

[2] The order of the High Court, given on 3 September 2020 was as follows:

- '(a) The appeal against sentence succeeds.
- (b) The sentence is set aside and substituted by the following sentence: 7 years imprisonment of which 2 years' imprisonment are suspended for 5 years on the condition that the accused is not convicted of attempted murder committed during the period of suspension.
- (c) The sentence is antedated to 19 March 2019.'

[3] Deputy Commissioner D C Hansen of the National Release Board of the Correctional Service queried the legality of the sentence imposed by the High Court with reference to the provisions of s 282 of the Criminal Procedure Act<sup>1</sup> (the CPA) which reads as follows:

'Whenever any sentence of imprisonment imposed on any person on conviction for an offence is set aside on appeal or review and any other sentence of imprisonment is thereafter imposed on such person in respect of such offence, the latter sentence may, if the court imposing it is satisfied that the person concerned has served any part of the first-mentioned sentence, be antedated by the court to a specified date which shall not be earlier than the date on which such first-mentioned sentence was imposed, and thereupon such latter sentence shall be deemed to have been imposed on the date so specified.' (My underlining).

---

<sup>1</sup> Criminal Procedure Act 51 of 1977.

[4] As Mr Dentlinger did not serve any part of the sentence imposed by the Regional Court as it was wholly suspended it follows that the High Court did not have the power to antedate the sentence it imposed. This much is conceded by the judges who heard the appeal. As they are *functus officio*, and thus cannot correct the sentence, the matter was referred to this court with the request to correct the sentence pursuant to its powers in terms of s 16 of the Supreme Court Act<sup>2</sup>.

[5] The antedating of the sentence of the High Court on appeal from the Regional Court, where no period of imprisonment was served by Mr Dentlinger was contrary to the provisions of s 282 of the CPA and hence clearly irregular. I am thus of the view that this is a matter where this court should exercise its review jurisdiction and correct the sentence of the High Court by the deletion of the order of the High Court that the sentence be antedated.

[6] In the result, I make the following order:

(a) Paragraph (c) of the order of the High Court dated 3 September 2020 is deleted.

---

**FRANK AJA**

---

<sup>2</sup> Act 15 of 1990.

---

SHIVUTE CJ

---

HOFF JA