

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**FANIE DRAGHOENDER**

(HIGH COURT REVIEW CASE NO.: 312/2008)

**CORAM: MULLER, J et SWANEPOEL, AJ**

Delivered on: March 20, 2008

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**REVIEW JUDGMENT**

**MULLER, J.:**

[1] The accused was charged with the offence of housebreaking with the intent to steal and theft of 16 DVD's worth N\$4000. He pleaded guilty to the charge in respect of 15 DVD's, which plea was accepted by the State. He was convicted. The accused was sentenced to 24 months imprisonment.

[2] I addressed the following queries to the magistrate:

*“Is the sentence imposed for the offence committed not too heavy, taking into consideration the mitigating factors, e.g. recovery of all the stolen items, the nature of the offence committed, namely no damage caused, etc? Did the magistrate consider suspending part of the sentence?”*

[3] The magistrate conceded that the sentence was harsh and proposed that half of the sentence be conditionally suspended.

[4] In the light thereof that the mitigating factors were fully recorded and the magistrate’s proposal that the sentence be partly suspended, I am of the opinion that referral to the magistrate to impose the sentence that he proposes, would only result in a delay to the prejudice of the accused. Accordingly, I shall set the sentence aside and impose an appropriate sentence myself.

[5] The accused was 28 years of age at the time, but had a clean record. He was gainfully employed and supported four children. All the stolen goods were returned and as a result of his arrest he lost his employment. No damage was caused to the employer’s premises. On other hand, the accused was placed in a position of trust by his employer, who entrusted him with the keys of the premises.

[6] The magistrate did not consider to suspend part of the sentence at all. In the light of the accused’s personal circumstances and the other mitigating factors, I am of the opinion that it would be appropriate to suspend part of his sentence

conditionally. By imposing such sentence there remains a sword over his head for a long period of time. Even the magistrate concedes that part of the sentence should be suspended.

[7] In the circumstances the following orders are made:

- a) The conviction of the accused is confirmed; and
- b) The sentence imposed by the magistrate on 19 February 2008 is set aside and substituted with the following sentence to run from the same date:

“The accused is sentenced to 24 months imprisonment of which 12 months are suspended for 5 years on condition that the accused is not convicted of the offences of housebreaking with the intent to steal and theft, committed within the period of suspension.”

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**MULLER, J**

I concur

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**SWANEPOEL, AJ**