



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 9/2014

In the matter between:

THE STATE

APPLICANT

and

JOSEF BRANDT

RESPONDENT

(HIGH COURT REVIEW CASE NO.: 240/2014)

Neutral citation: *S v Brandt* (CR 9/2014) [2014] NAHCMD 70 (4 March 2014)

Coram: PARKER AJ *et* UNENGU AJ

Delivered: 4 March 2014

Flynote: Criminal procedure – Sentence – Suspended sentence – Conditions of – Correct wording of condition of suspension – The word ‘committed’ should be part of condition – Additionally, condition should be clear and clearly related to the crime accused is convicted of – Accused must know exactly which conduct may lead to his having to serve the suspended sentence – Conditions of suspension must meet these requirements.

Summary: Criminal procedure – Sentence – Suspended sentence – Conditions of – Correct wording of condition of suspension – The word ‘committed’ should be part of condition – Additionally, condition should be clear and clearly related to the crime accused is convicted of – Accused must know exactly which conduct may lead to his having to serve the suspended sentence – In instant case the conditions imposed for

suspending part of the sentence are wrong because they do not contain the word committed – Additionally, conditions that accused is ‘not convicted of any offence of dishonesty’ not meeting such requirements.

ORDER

- (a) The conviction and sentence are confirmed.
- (b) The condition of suspension is deleted and replaced with the following –

Ten months’ imprisonment, of which a period of six months is suspended for three years on condition that the accused is not convicted of (i) housebreaking with intent to steal and theft or (ii) theft, committed during the period of suspension.

JUDGMENT

PARKER AJ (UNENGU AJ concurring):

[1] The accused person was charged before the magistrates’ court for the district of Mariental, held at Aranos, with one count of housebreaking with intent to steal and theft. He was convicted on his own plea of guilty and sentenced accordingly.

[2] The proceedings are in accordance with justice but the formulation of the sentence is wrong for two reasons. First, the suspension for three years of six months of the sentence of 10 months’ imprisonment is subjected to the condition that both the commission of the offence and the accused’s conviction should both be within the suspended period of three years. A condition of suspension should not be formulated in such a way as to include both the commission of the offence and the conviction therefor of the accused in the period of suspension. The reason is that for all manner of reasons, it can happen that the conviction only follows after the period of suspension has expired. If that happened, the suspended part of the period of

imprisonment cannot be put into operation simply because the accused would not have been convicted within the period of suspension.

[3] Second, a condition of sentence must, among other things, comply with these two requirements:

- (a) it must be related to the offence in question, that is, it must not be so wide that it has no clear nexus with the offence concerned; and
- (b) the condition must be clear and the accused should know exactly what conduct may lead to his or her having to serve the suspended sentence.

(See *S v Oupietji*; *S v Boois*; *S v Josef and Another* 1991 NR 91.)

In the instant case, the condition states that the accused should 'not (be) convicted of any offence of dishonesty'. The condition imposed by the learned magistrate does not meet these requirements.

[4] Based on these reasons, I make the following order:

- (a) The conviction and sentence are confirmed.
- (b) The condition of suspension is deleted and replaced with the following –

Ten months' imprisonment, of which a period of six months is suspended for three years on condition that the accused is not convicted of (i) housebreaking with intent to steal and theft or (ii) theft, committed during the period of suspension.

C Parker
Acting Judge

E P Unengu
Acting Judge