

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case no: CR 18/2017

In the matter between:

THE STATE

And

JASON JASON

ACCUSED

HIGH COURT NLD REVIEW CASE REF NO. 366/2015

Neutral citation: *S v Jason* (CR18 /2017) [2017] NAHCNLD 101 (19 October 2017)

Coram: TOMMASI J and JANUARY J

Delivered: 19 October 2017

Flynote: Review – Sentence – Housebreaking – First offender – Plea of guilty sentenced to full force of court's jurisdiction i.e. five years imprisonment 1 year suspended – Shockingly inappropriate taking into account the fact that the accused is a first offender who pleaded guilty.

ORDER

1. The conviction of housebreaking with intent to steal and theft is confirmed.
2. The sentence is set aside and the following is put in its place:

'Three years' imprisonment of which 1 year's imprisonment is suspended for five years on condition that the accused person is not found guilty of housebreaking with intent to steal and theft, committed during the period of suspension.
3. The sentence is ante-dated to 9 November 2015.

REVIEW JUDGMENT

TOMMASI J (JANUARY J concurring):

[1] The accused appeared in the district court of Outapi sitting at Ruacana. He was convicted of housebreaking with intent to steal and theft of a fridge valued at N\$5999. He was charged jointly with two other accused who pleaded not guilty and their trials were separated.

[2] The conviction is in order and will be confirmed. The sentence however is not in accordance with justice and this court ought to interfere.

[3] The accused is a first offender, not married and the father of two young children who are living with their mother. He was unemployed and had no livestock or savings. He informed the sentencing court that the fridge was recovered and that he was held in police custody for two months prior to being sentenced.

[4] The learned magistrate indicated in his reasons that he was guided by the principles of sentencing. He took into consideration the crime, the interest of society and the personal circumstances of the accused. The learned magistrate emphasized

the prevalent nature of the offence and the high value of the property stolen. The court found no special circumstances to deviate from the norm to impose a custodial sentence for the crime housebreaking with intent to steal and theft. The magistrate concluded that the seriousness of the offence and the interest of the community overshadow the accused's personal circumstances.

[5] It is apparent to this court judging from the number of review matters, that the offence of housebreaking with the intent to steal and theft is prevalent in this jurisdiction. This court is in full agreement that a custodial sentence, as a norm, is the appropriate sentence for these offences. However what is shocking in this matter, is the fact that that the learned magistrate imposed the five years' imprisonment which is the full force and extent of the magistrate's jurisdiction for a first offender who had pleaded guilty. None of the latter factors were mentioned and it is not apparent what weight the court accorded to it.

[6] It is my respectful view that the sentence imposed by the learned magistrate is shockingly inappropriate and clearly not in accordance with justice and given the prejudice to the accused person if the matter is not dealt with forthwith, this court dispensed with the matter without obtaining a statement from the learned magistrate.

[7] In the result the following order is made:

1. The conviction of housebreaking with intent to steal and theft is confirmed.
2. The sentence is set aside and the following is put in its place:

'Three years' imprisonment of which 1 year's imprisonment is suspended for five years on condition that the accused person is not found guilty of housebreaking with intent to steal and theft, committed during the period of suspension.

3. The sentence is ante-dated to 9 November 2015.

M A TOMMASI
JUDGE

I agree

H C JANUARY
JUDGE