

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram:** F. MacGregor (PCA) M. Twomey (J.A), B. Renaud (J.A)]

**Criminal Appeal SCA 18/2017**

**(Appeal from the Supreme Court Criminal Revision RV1/2016, RV2/2016, RV3/2016  
arising out of MC49/2015, MC 50/2015, MC 51/2015)**

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Jefferson Marie

Appellant

Versu  
s

The Republic

Respondent

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Heard: 21 August 2018

Counsel: Mr. N. Gabriel for the Appellant

Ms. A. Faure for the Respondent

Delivered: 31 August 2018

**JUDGMENT**

M. Twomey (J.A)

[1] In 2012, the Appellant was sentenced to three years imprisonment for the offence of stealing. He completed the sentence in 2015. Shortly thereafter on his release, he engaged in what learned Counsel for the Respondent describes as a “theft escapade” resulting in two housebreakings and one theft in La Misere, Mahe on 17 January 2015 and a charge of being a rogue and vagabond after being discovered on the roof of another house on 27 January 2015.

[2] He was charged before the Magistrates Court in CR.S 49/15 on two counts, count one for housebreaking contrary to section 289 (a) of the Penal Code and count two for stealing in

a house belonging to Margarita Haraya contrary to section 264(b) of the Penal Code; in CR.S50/2015, of being a rogue and vagabond contrary to section 174 (d) of the Penal Code for the incident involving his presence on the roof of a house belonging to Ronny Ah Shung; and in CR 51/2015 on two counts of housebreaking and stealing from the dwelling house of David Quatre.

- [3] The learned magistrate sentenced him as follows: for the offence of housebreaking committed in CR.S 49/2015, four years imprisonment to run concurrently with the sentence in CR.S 51/2015; for the offence of being a rogue and vagabond in CR.S 50/2015 three month imprisonment; for the offences of housebreaking and theft in CR.S.51/2015 four years and one year; and six month respectively to run concurrently and for the all the terms of imprisonment to run concurrently with the sentence in CR.S 49/2015.
- [4] The Republic applied for revision of these sentences in terms of section 328 read with section 329 of the Criminal Procedure Code on the basis that the sentences contravened section 27 (1) (b) (ii) of the Penal Code which provides for minimum sentences where subsequent offences of a similar nature occur within a period of five years of a previous conviction.
- [5] The court *a quo* (learned judge Dodin J) decided that since the Appellant had been sentenced in 2012 for three years for the offence of stealing and had only recently finished his sentence and while the Court would be reluctant to interfere with the sentence of a lower court he could find no awful reason for the learned Magistrate to treat the accused as a first offender especially given that the accused had committed a number of offences. He therefore imposed a sentence of ten years imprisonment with respect to case CR.S 49/2015, and a sentence of ten years in respect of the conviction for housebreaking in CR.S 51/15 and maintained the sentence of eighteen months for the count relating to stealing which sentence had at that date already been served. He made not substitution in the case of CR.S 50/2015.
- [6] He ordered that the sentences run concurrently with a cumulative total sentence of ten years imprisonment.

- [7] The Appellant initially appealed the sentence on the grounds that it was “harsh”.
- [8] He was subsequently given leave to amend his memorandum of appeal and abandoned the ground relating to the harshness of the sentence and appealed to the Court instead to rectify what he saw as an injustice caused by the judge *a quo* to not specially state that the substituted sentences imposed would begin from the date of his conviction in the Magistrates Court on 27 October 2015.
- [9] We are of the view that this position is implied from the sentence by the judge *a quo* but are happy to clarify to the Prison Services that a when a sentence is imposed or substituted it begins to run from conviction with time spent on remand taken into consideration unless otherwise stated. Any remission of sentence for good behaviour is however in the discretion of the Prison Services.
- [10] For the avoidance of doubt, the Appellant is to serve ten years of imprisonment from the date he was remanded into custody, which is the 27 January 2015. The entitlement to remission depends obviously on his good behaviour in prison and which must be taken into account to decide his date of release.

M. Twomey (J.A)

I concur: .....

F. MacGregor (PCA)

I concur: .....

B. Renaud (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 31 August 2018.