

IN THE SUPREME COURT OF SEYCHELLES

KEVIN ZELIA

Appellant

V

THE REPUBLIC

Respondent

Criminal Appeal Side No.02 of 2012

Mr. France Bonte Attorney at Law for the Appellant

Mr. Khalyaan Karunakaran State Counsel for the Respondent

JUDGMENT

Burhan J

This is an appeal against sentence.

The Appellant was charged with another in the Magistrates' Court as follows;

Breaking into building and committing a felony therein namely Stealing contrary to and punishable under section 291(a) as read with section 22 and 23 of the Penal Code.

The particulars of the offence are that;

Kevin Ricky Zelia residing at Saint Louis, Mahe, and Marcus, Jovanie Fardial residing at Plaisance, Mahe, in the early morning of the 4th day of December, 2010, at Inter Island Quay, Victoria, Mahe, broke and entered the store namely a Container and stole therein eighteen (18) crates of Seybrew beers value seven thousand four hundred and fifty-nine rupees fifty-six cents (Rs.7,459.56), eleven crates of Guinness value six thousand one hundred and seventy-seven rupees and ninety-three cents , (Rs.6,177.93), twelve small pets of Fanta value one hundred and forty-five rupees and sixty-two cents, (Rs.145.62), nineteen packets small pets of Coca-Cola

value two thousand seven hundred and sixty-seven rupees, and ninety-two cents, one packet of Orange (small pet) value one hundred and forty-five rupees and sixty-two cents and twenty-nine empty crates value five hundred and eighty rupees all to the total value of seventeen thousand two hundred and seventy-six rupees and sixty-five cents (Rs.17, 276.65) being the property of Inter Island Boats Limited.

The Appellant was convicted on his own plea of guilty. It was brought to the notice of the learned Magistrate that the Appellant was serving a sentence on a previous conviction. The learned Magistrate having considered the plea in mitigation namely the age of the offender being 28 years, the fact he had four daughters aged 2 to 8 years and the fact he had pleaded guilty expressing remorse sentenced the Appellant to a term of 10 years imprisonment and made further order that the sentence run concurrently with the sentence he is serving. Learned counsel for the Appellant seeks to appeal against the sentence imposed on the grounds it is harsh and excessive.

It is to be observed that the previous conviction list indicates that the Appellant had a previous conviction for the offence of Robbery with violence. It is also apparent that the Appellant had committed the offence of Breaking into a building in this instant case, after the amendment to section 36 of the Penal Code amendment Act 20 of 2010 came into force (i.e. on the 10th August 2010) which refers to consecutive sentencing as discussed in the case of ***Magid Moustache v Republic Cri App Side 15 of 2012***. Further when one considers the particulars of offence, it is to be noted a large number of items valued at 17,276.65 had been stolen.

It is apparent that the learned Magistrate having considered the plea in mitigation had in sentencing the Appellant considered the principle of totality of sentences as set out in the case of ***Ricky Victor v Republic Cri App 11 of 2010***, when making order that the terms of imprisonment run concurrently. Learned counsel for the Respondent is not seeking to contest the sentence imposed on the grounds it should have been consecutive.

Considering all these facts it cannot be said that the sentence of 10 years imprisonment to run concurrently with the sentence he is serving could be said to be harsh and excessive.

The appeal against sentence stands dismissed.

M.N BURHAN

JUDGE

Dated this 28th day of March 2013