

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 17/2013

Appeal from Magistrates Court decision 508/2012

[2014] SCSC

YANNICK SAVY

Appellant

Versus

THE REPUBLIC

Heard: 2 May, 2014

Counsel: Mr. Gabriel for appellant

Ms. E.Gonthier, Attorney General for the Republic

Delivered: 2 May 2014

JUDGMENT

McKee J

[1] The Appellant, Yannick Savy, appeals against sentence in respect of the charges of burglary and stealing from a dwelling house. In this appeal he is represented by Mr Nichol Gabriel.

[2] The Appellant was charged with two offences:

[3] Count 1.

[4] Burglary contrary to and punishable under section 289[a] of the penal code.

[5] The particulars were as follows:

[6] Yannick Savy, residing at Roche Caiman, Mahe, in the early morning of 3rd July 2012, at Roche Caiman, Mahe, broke and entered the dwelling house of Jena Jupiter with intent to commit a felony therein, namely stealing.

[7] Count 2.

[8] Stealing from a dwelling house contrary to section 260 as read and punishable under section 264[b] of the penal code.

[9] The particulars were as follows:

[10] Yannick Savy, residing at Roche Caiman, Mahe, in the early hours of 3rd July 2012 at Roche Caiman, Mahe, stole two mobile phones make Techno and one mobile phone make Nokia all to the total value of SR 11.000 being the properties of the aforesaid.

[11] The Appellant appeared before the magistrates' court also represented by Mr Gabriel. On 17th August 2012 the Appellant tendered pleas of Not Guilty to both charges and the matter was continued. On 1st February 2013 the charges were again read to the Appellant who entered a plea of Guilty to each charge. The brief facts were read in open court and admitted. Thereafter the Magistrate found the Appellant guilty on both charges and convicted him. His Counsel agreed that the Appellant had previous convictions. A Record of previous Convictions is on the appeal court file which shows that the date for the last conviction - stealing from a dwelling house was on 14th September 2011.

[12] The magistrate adjourned to consider sentence and gave reasons in writing. The magistrate sentenced the Appellant to fifteen years in respect of count 1 and one year imprisonment in respect of count 2, ordered that the sentences be consecutive, hence the Appellant was sentenced to sixteen years imprisonment.

[13] It is against this sentence of sixteen years imprisonment that the Appellant now appeals.

[14] I have considered the nature of the offences, the circumstances of the case, the pleas of guilty, the previous convictions, and the plea in mitigation, the reasons for sentence and the submissions from both counsels.

SUBMISSIONS.

[15] Defence Counsel submitted that the sentences were harsh and excessive. He submitted that if minimum mandatory sentences applied there should be a reduction in line with the *Ponoo* judgment in the Court of Appeal. Furthermore the magistrate, who was not a senior magistrate at the time, had exceeded her statutory powers of sentencing which restricted the length of sentence, which she could impose to eight years imprisonment.

[16] Counsel for the Republic submitted that since the Appellant was not a first offender and had been convicted of a similar offence within the statutory five year period the sentence on Count 1 was legally justified. The sentence of one year imprisonment for Count 2 could not be considered excessive. The magistrate, under section 9[1] of the Criminal Procedure Code, had an option of imposing consecutive or concurrent sentences and she had followed the general rule when she ordered the sentences to be consecutive.

FINDINGS.

[17] The date when the present two offences occurred was 3rd July 2012. The convictions were entered on 1st February 2013 and sentence was delivered on 14th February 2013. In the appeal papers there is a separate charge sheet relating to two further offences [namely attempted housebreaking and damaging property] allegedly committed by the Appellant on 5th November 2012. I have no knowledge of the outcome of this case. In any event this later case has no bearing on the present matter.

[18] The Record of Previous Convictions shows previous convictions for the offences of:

[19] 1] housebreaking and stealing with a trial date of 5th August 2010,

[20] 2] stealing from a dwelling house with trial date of 12th September 2011, and

- [21] 3] Stealing from a dwelling house with a trial date of 14th September 2011.
- [22] This Record also shows that the Appellant was released from prison on 17th April 2012. The date of the offences under appeal is 2nd July 2012. The date of the offences now under appeal is within three months of the Appellant's release from prison and the trial magistrate was entitled to infer that, even although a young man, the Appellant was prone to re-offend. Hence she was correct in concluding that the appropriate sentence again was imprisonment.
- [23] The offence of burglary falls within Chapter XXIX and the offence of stealing from a dwelling house falls within Chapter XXVI of the penal code. The Record of Previous Convictions show previous convictions for the charges of housebreaking [Chapter XXIX] and stealing [Chapter XXVI] on 5th August 2010 and hence the Appellant was to be considered as a re-offender within a five year period. Consequently, in terms of section 27 of the penal code, the minimum mandatory sentence in respect of this charge of burglary is fifteen years imprisonment and eight years imprisonment in respect of this offence of stealing from a dwelling house.
- [24] In the list of previous convictions there is a conviction for stealing from a dwelling house dated 12th September 2011 for which a suspended term of imprisonment was imposed. Since that offence is an excepted offence under section 27 of the penal code I make no order relative to this sentence.

SENTENCE.

- [25] The magistrate, being other than a senior magistrate at the time of sentencing, in my opinion, still had to balance the minimum mandatory sentencing provisions with the sentencing powers as provided for in section 6[2] of the Criminal Procedure Code. The proviso in this section provides that the Magistrate when imposing sentence shall not exceed the term of eight years' imprisonment. This limiting provision is to be read along with section 9[2] of the Criminal Procedure Code. This provides that for the purposes of appeal the aggregate of consecutive sentences imposed in case of convictions for several

offences at one trial shall be deemed to be a single sentence. In the present matter, in my view, the aggregate sentence should still not exceed eight years' imprisonment.

[26] The strongest mitigating factor was that the Appellant had pleaded Guilty to the charges. As a general principle an offender who pleads guilty may expect some credit, the benefits being a saving of court time and public money and the sparing of witnesses from having to attend trial to give evidence. Where a judge takes a plea of guilty into account it is important that he says that he has done so [Archbold 2012 edition at para 5-112].

[27] In the present matter, in respect of the offence of burglary - Count 1- I take as a starting point eight years imprisonment, the upper limit of the magistrate's jurisdiction, and give a discount of one year in respect of the plea of guilty. I do not interfere with the sentence of one year imprisonment imposed in respect of the offence of stealing from a dwelling house – count 2. Since both offences arose out of the same transaction or incident it is appropriate that the sentence be concurrent rather than consecutive.

[28] In the result, I allow the appeal against sentence to the following extent. I quash the order of the magistrate that 15 years imprisonment be imposed in respect of Count 1 and in its place impose a sentence of 7 years imprisonment. I order that this sentence of 7 years imprisonment be served concurrently with the sentence of 1 year imprisonment imposed in respect of Count 2. Accordingly the total sentence of imprisonment imposed on the appellant is 7 years imprisonment.

Signed, dated and delivered at Ile du Port on 2 May 2014

C McKee
Judge of the Supreme Court