

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 12/2013**

**Appeal from Magistrates Court decision 581/2013**

**[2014] SCSC**

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**NATHANIEL THELERMONT**

Appellant

Versus

**THE REPUBLIC**

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Heard: 14 March , 2014

Counsel: Mr Nichol Gabriel for appellant

Ms. Gonthier, Attorney General for the Republic

Delivered: 2 May 2014

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**JUDGMENT**

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McKee J

[1] The Appellant appeals against sentence by Notice of Appeal dated 8th February 2013. The Appellant is represented by Mr Nichol Gabriel.

[2] The Appellant was charged with the following offence:

**[3]** Breaking and entering a building and committing a felony therein, namely stealing, contrary to section 291[a] of the penal code and punishable under section 291 of cap.158.

**[4]** The particulars of the offence were as follows:

**[5]** Nathaniel Thelermont, residing at Belvedere, Mahe, on a date unknown by the prosecution between 27<sup>th</sup> July 2012 and 9<sup>th</sup> August 2012, at Mont Fleuri, Mahe, broke and entered into the Helini Warehouse being the property of Rema Albert and stole therein

[10] Packets of clothes pins value SR 120,

[2] Packets of hair beads value SR120,

[3] School bags value SR 345,

[2] Packets PVC tapes value SR 216,

[2] Pairs of shoes value SR 130,

[3] Pairs of slippers value SR 135,

[12] Screwdrivers value SR 216,

[2] Belts value SR 130,

[1] Cap value SR 35,

[1] Torch value SR18,

[1] Plastic of white pipes value SR 75,

[1] Kitchen knife value SR 25,

[4] Washing brush value SR 112, all amounting to SR1, 677 being the property as aforesaid.

**[6]** At the proceedings in the magistrates' court the Appellant was again represented by Mr Nichol Gabriel. The Appellant pleaded Not Guilty and the matter proceeded to trial. Prior to the close of the prosecution case the prosecution slightly amended the particulars of the offence substituting "[12]" for "[10]" packets of clothes pegs and deleting the words "12 screwdrivers" and substituting "a plastic bag containing screws". Thereafter the

prosecution closed its case. The magistrate found a case to answer and explained the election to the Appellant who gave an un-sworn statement from the dock. There were no witnesses called for the defence. The magistrate considered the evidence, found that the case was proved beyond reasonable doubt and convicted the Appellant.

[7] Defence Counsel mitigated on behalf of the Appellant. He was a man of clear record prior to his conviction and twenty four years of age. A considerable number of the items stolen were recovered.

[8] A person convicted of an offence under section 291 of the penal code is liable to imprisonment for fourteen years.

[9] The magistrate sentenced the Appellant to ten years imprisonment.

[10] **SUBMISSIONS.**

[11] The Appellant appeals against sentence only. Defence Counsel submits that the sentence was harsh and excessive especially since the Appellant was a young man and of clear record until the present conviction. It would seem that the magistrate and Defence Counsel and Counsel for the Republic in the appeal agreed that a minimum mandatory sentence provision applied. In his Submission to me Defence Counsel referred to the Seychelles Appeal Court case of *Ponoo*, and following its rationale, submitted that this was a suitable case for an individualized sentence. Counsel for the Republic submitted that a minimum mandatory sentence applied, the circumstances of the case did not make a *Ponoo* reduction appropriate and hence the sentence was correct.

[12] **FINDINGS.**

[13] I have considered the nature and circumstances of the offence, the previously clear record of the Appellant and the submissions of counsel. He was twenty four years of age. He was convicted after trial. Some items were recovered. However this was not through any action by the Appellant. These items were found through the vigilance of police officers.

- [14] Both counsel held that minimum mandatory sentencing provisions applied and I am referred by Miss Gonthier to section 27[1][c][i] of the penal code. The Prosecution was unable to give a precise date when the offence took place and could merely state that it occurred sometime between 27<sup>th</sup> July and 9<sup>th</sup> August 2012. There is nothing wrong in wording the charge in that way. There was an amendment to these provisions which came into effect on 30<sup>th</sup> July 2012. The provisions in force on 27<sup>th</sup> July 2012 apply hence in terms of the section there is a minimum mandatory sentencing provision of ten years imprisonment.
- [15] However I take judicial notice that at the time of dealing with this matter the magistrate in this case was a Magistrate other than a Senior magistrate and I look to section [6][2] of the Criminal Procedure Code which I repeat below:
- [16] [2] The Magistrates' Court when presided over by a Magistrate other than a Senior Magistrate may pass any sentence authorized by law:
- [17] Provided that such sentence shall not exceed, in the case of imprisonment, 8 years, and in the case of a fine, SR75,000.
- [18] It follows that the magistrate had to look to the minimum mandatory sentencing provision but also bear in mind the limits on the sentencing powers. The existing sentence of ten years imprisonment exceeds his sentencing limit.
- [19] In my view the relevant factors in considering the appropriate sentence in this case are as follows:
- [20] The court has to take cognisance that the Legislature considers this type of offence to be serious.
- [21] The magistrate can impose a maximum sentence of eight years imprisonment.
- [22] This was a conviction after trial. The Appellant was, of course, entitled to proceed to trial, but in doing so thereby lost any benefit he may have gained from a plea of guilty

- [23] The mitigating factors are that the Appellant was a man of twenty four years of age and up to the date of conviction had been a man of clear record.
- [24] It would be unusual for a court to impose a sentence at the upper level of its jurisdiction on a first offender even after trial.
- [25] This is an offence relating to commercial premises and not domestic premises and to that extent the privacy of a person's home was not invaded.
- [26] A large number of items were taken which individually were of small value but with a total value of some SR 1600.
- [27] In my opinion a sentence of six years and six months imprisonment would be appropriate in this case.
- [28] In the result, I allow the appeal against sentence to this extent. I quash the sentence of ten years imprisonment and in its place impose a sentence of six years and six months (6 years and 6 months) imprisonment.

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

C McKee  
**Judge of the Supreme Court**