IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 23/2012

Appeal from Magistrates Court decision 361/2011

[2014] SCSC 275

GEORGE JOUANEAU

Appellant Versus

THE REPUBLIC

Heard: 1 July 2014

Counsel: Mr. Nichol Gabriel for appellant

Mrs. Lansinglu Rongmei, State Counsel for the Republic

Delivered: 31 July 2014

JUDGMENT

McKee J

[1] This is Criminal Appeal Number CA 23/2012. This appeal emanates from Magistrates Court file 361/2011. There is reference in some court documents relating to this appeal being numbered 43/12. That number is incorrect and should read 23/12.

[2] In this case the Appellant was at first jointly charged with a co-accused Selwyn Louis Marie with the offence of breaking and entering into a building and committing a felony, namely stealing, contrary to section 291[a] as read with section 23 of the Penal Code. The particulars of the offence alleged that both accused had broken into the St Louis District

Administration Office on 25th December 2010 and stolen a large quantity of soft drinks, dry snacks, toys, paint and a mobile phone all to the value of SR 10780/- The case involving the co-accused was finalised separately following his early plea of guilty and before this case proceeded against the Appellant. Marie was sentenced to a period of two years imprisonment in respect of this Magistrates Court file 361/12. However this offence did not stand on its own and formed part of a series of four charges disposed of simultaneously in relation to Marie. The cumulative sentence of 3 years imprisonment imposed by the Magistrate was the subject of a Revision and the revised sentence was a term of 15 years imprisonment [Revision No 1 of 2011].

[3] The joint accused, Marie and the Appellant, had firstly come before the Magistrates Court on this charge on 26th May 2011 where the co-accused Marie indicated that he wished to enter a plea of guilty and the matter was continued for both accused. On 9th June 2011 the co-accused Marie was duly convicted and the case was continued to 14th June 2011.

[4] The record indicates that on 14th June 2011 Marie was sentenced for this offence and the case continued in respect of the Appellant. The Appellant was formally advised of his constitutional rights. The Appellant stated to the court that he wished to seek legal advice. This matter was continued to 20th July 2011 when the Appellant returned to court without representation. He was warned that the matter could proceed without him being represented. The matter was further continued to 2nd August 2011. Initially the Appellant failed to appear and a warrant of arrest was issued. The warrant was subsequently cancelled when the Appellant arrived late but gave a satisfactory explanation to the Magistrate. On this occasion the Appellant was formally remanded on bail. He was advised that he could face a sentence of ten years imprisonment if found guilty. The Appellant volunteered an explanation as follows; “I did not take all the items which they said I had taken. When I came to that place, the place was already broken”. The Magistrate recorded this statement. The matter was formally adjourned to 9th September 2011 with the Appellant represented on this occasion. The matter was further adjourned to 5th October 2011 for plea. On 5th October 2011 with counsel present the charge was formally read to the Appellant who entered a plea of Not Guilty to the charge. A trial date

was fixed and the Appellant advised that the matter would proceed even if he was unrepresented in court on that day. On 17th October 2011 the Appellant appeared unrepresented. The Magistrate stated that he intended to proceed with the trial and the Appellant would have to defend himself. At the invitation of the Prosecutor and on an indication from the Appellant that he may reconsider his earlier plea the Magistrate again read the charge to the Appellant. The Appellant entered a plea of Guilty. The brief facts were read to the Appellant and he agreed the brief facts. Thereafter the Magistrate formally convicted the Appellant of the charge. The Magistrate was advised that the Appellant was a first offender. By way of mitigation the Appellant stated that at the time of the offence he had been consuming heroin but since then had obtained help at the Mount Royal Drug Rehabilitation Centre and had stopped consumption of drugs. He had started a small carpentry business, was looking after his child and assisted youths in his area. The Magistrate sentenced the Appellant to ten years imprisonment. He now appeals this conviction and sentence.

[5] **FINDINGS.**

[6] **APPEAL against CONVICTION**

[7] I have set out the record of proceedings in some detail in view of the submission from Defence Counsel regarding the Appeal against Conviction. It shows the progress of the case through the courts.

[8] Defence Counsel makes the point that, while the formal charge has the date of the offence as 25th December 2010 the brief facts had the time and date as the early hours of 26th December 2010. While there is a slight discrepancy the times and dates are sufficiently proximate in time not to mislead the Appellant. The minor discrepancy is not of the essence. The Appellant knew clearly what he was pleading and agreeing to when he entered his plea and agreed the brief facts. There is no material irregularity on this point.

[9] Defence Counsel also raises a point from the interchange between the prosecutor, Magistrate and Appellant prior to the charge being formally read to the Appellant on 17th

October 2011. Counsel submits that the Prosecutor indicated that the Appellant had earlier pleaded guilty to the charge. The Record does show these words. That is, of course, incorrect. A plea of not guilty was entered. It may be a typographical error on the Record but in any event such apparent error was immediately rectified when the Magistrate asked the Appellant whether he was still maintaining his earlier plea of Not Guilty. It was only after the Appellant invited the Magistrate to put the charge to him again that he entered an unequivocal plea of Guilty. There is no irregularity arising from this point.

[10] It is on these two points that Defence Counsel submits that material irregularities exist. I disagree for the above reasons.

[11] The Appeal against Conviction is DISMISSED.

[12] **APPEAL against SENTENCE.**

[13] The Appellant also appeals against the sentence of ten years imprisonment. An examination of the earlier file for both accused shows that the co accused was originally sentenced to a term of two years imprisonment in respect of this charge. This was substantially increased to a term of fifteen years imprisonment on Revision.

[14] The salient points in respect of the present sentence in my view are as follows:

[15] The offence occurred during the night of 25th and 26th December 2010 but the Appellant was sentenced on 17th October 2011, some ten months after the incident.

[16] The Appellant pleaded guilty to the charge.

[17] He did not commit the offence alone.

[18] On the information made available to the court by affidavit in a submission that the co-accused, Marie, be initially remanded in custody, the prosecutor advised the court that Marie was a continuous offender, had been difficult to apprehend, had evaded arrest and had eventually strongly resisted capture. This Appellant was at the time of the offence a

first offender. In these circumstances a court could come to a view that this Appellant was not the principal offender in this matter.

[19] In view of the time gap of some ten months between the date of the offence and the date of sentence a court could have formed a view that there could be some truth in the personal mitigation put forward by the Appellant at trial and mentioned again in the present defence submissions. The truthfulness of the mitigation could have been checked by the ordering of a probation report prior to sentencing and this may have had a bearing on the ultimate sentence imposed.

[20] An aggravating factor was that a large quantity of high value resalable items was stolen. The total value of the items taken amounted to almost SR11000.

[21] I take note that in the revision case two of the sentences in files numbered 359/11 and 360/11, albeit under the totality principle, were five years and six years imprisonment.

[22] I take into account all the above points and keep in view the submissions by both counsels in respect of sentence.

[23] In the result I am of the view that justice would be served by a reduction in sentence and I allow the appeal against sentence. I quash the sentence of 10 years imprisonment and in its place impose a sentence of 5 years imprisonment.

Signed, dated and delivered at Ile du Port on 31 July 2014

C McKee
Judge of the Supreme Court