

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 26/2012

**Appeal from Magistrates Court decision 422/2012, 443/2012, 444/2012, 445/2012,
446/2012, 447/2012**

[2014] SCSC 287

TIM LAFORTUNE

Appellant

versus

THE REPUBLIC

Heard: 16 May 2014

Counsel: Mr Gabriel for appellant

Mr Kumar , Assistant State Counsel for the Republic

Delivered: 6 August 2014

JUDGMENT

McKee J

[1] The Appellant appeals against Sentence in six separate magistrates court cases , which are listed below. The reference numbers are 442/12, 443/12, 444/12, 445/12, 446/12 and 447/12 but are to be considered in one Criminal Appeal Court file CA26/2012. All charges relate to the offence of stealing. These are set out in chronological order based on the dates of offences but also follow in sequence the case file numbers.

- [2] Case No. 442/12.
- [3] **Stealing** contrary to and punishable under section 260 of the Penal Code.
- [4] Particulars of the offence.
- [5] Tim Lafortune residing at La Louise, Mahe, on 30th May 2012 at Bel Ombre, Mahe, stole the sum of SR4500 being the property of Rosemary Sinon.
- [6] Case No. 445/12.
- [7] **Stealing** contrary to and punishable by section 260 of the Penal Code.
- [8] Particulars of Offence.
- [9] Tim Lafortune, residing at La Louise, Mahe, on 30th May 2012, at Bel Ombre, Mahe, stole the sum of SR2000/- in notes of SR500/- being the property of Claire Antat.
- [10] Case No. 446/12.
- [11] **Stealing** contrary to and punishable by section 260 of the Penal Code.
- [12] Particulars of the offence.
- [13] Tim Lafortune, residing at La Louise, Mahe, on 30th May 2012 at Bel Ombre, Mahe, stole one laptop make Acer to the total value of SR10,000/- being the property of Chantel Confiance.
- [14] Case No. 447/12.
- [15] **Stealing** contrary to and punishable by section 260 of the Penal Code.
- [16] Particulars of the offence.
- [17] Tim Lafortune, residing at La Louise, Mahe, on the 30th May2012, at Bel Ombre, Mahe, stole one laptop make Compac to the value of SR12,000/- being the property of Carol Etienne.

- [18] Case No. 443/12
- [19] **Stealing** contrary to and punishable under section 260 of the Penal Code.
- [20] Particulars of the offence.
- [21] Tim Lafortune residing at La Louise, Mahe, on 1st June 2012 at La Louise, Mahe, stole the sum of SR3200/- being the property of Cyril Jean.
- [22] Case No. 444/12.
- [23] **Stealing** contrary to and punishable by section 260 of the Penal Code.
- [24] Tim Lafortune, residing at La Louise, Mahe, on 17th June 2012, at Bel Ombre, Mahe, stole one water pump valued at SR2500/-, one pen drive valued at SR400/- and one memory card valued at 400/-SR all to the total value of SR3300/- being the property of Bernadette Freminot.
- [25] There were four charges sheets relating to offences committed on 30th May 2012, one charge sheet relating to an offence of 1st June 2012 and the remaining charge relating to an offence on 17th June 2012.
- [26] The Appellant pleaded GUILTY to all charges. The six charges were in six separate charge sheets. The Court elected to deal with all cases together on the same day. The Record of Proceedings indicates that after a guilty plea was tendered to each charge the prosecutor provided no brief facts in respect of each offence. He simply stated that the facts were as in the charge sheet for each individual case. While this can be a practice adopted by a prosecutor in a busy magistrates court it would normally be done where the circumstances of an offence would be relatively obvious from the wording of a charge. With respect to the Magistrate, in my opinion, in the present instance, he should have asked to be provided with more information. He would have been better equipped to consider the degree of criminality in each charge.
- [27] The Notes of Proceedings and other documents seem to refer in some instances to the sequence of cases being from 442/12 to 446/12 and on other occasions the case number 447/12 is included. It may be that these are written or typographical errors but in any

event the total term of imprisonment imposed was twenty four years so it is reasonable to assume that the Magistrate had in mind that each of the six cases 442/12 to 447/12 would attract to term of imprisonment of four years and I deal with the appeals against sentence on this basis.

[28] In considering sentence I take into account that the Appellant pleaded Guilty to all six charges. No brief facts are available other than in the particulars of each offence and I can only sentence on this basis. No previous convictions were disclosed to the court although the Appellant stated to the sentencing court that he was by then serving a sentence of imprisonment. The Appellant expressed remorse when tendering his pleas. A total of SR9700, two laptops and a water pump and other two small items were taken. There is no information that any of the goods or any money was recovered and I take that to be the position.

[29] I also take into account that four separate offences were committed on the same day, the 30th May 2012. Further thefts occurred on the 1st and 17th days of June 2012. I infer from the facts as known that the Appellant went on a stealing spree on 30th May in the Bel Ombre area and emboldened by success committed further similar offences soon thereafter, one being in his local neighbourhood of La Louise and the other again in the Bel Ombre area.

[30] The Magistrate chose to impose six consecutive sentences each of four years duration and thus the total period of incarceration was twenty four years. Even allowing for the fact that the Magistrate was dealing with six offences of theft, the totality of sentence, in my opinion, has to be considered excessive and I revise the sentences taking the principle of totality into account. This principle was acknowledged in the Seychelles Supreme Court case *The Republic v Paddy Meme No 60 of 2008*. The overriding principle is that the overall sentence should be just and proportionate.

[31] I now consider the appropriate sentence in respect of each of the charges. In respect of the charges arising from the offences which occurred on 30th May 2012 (namely cases 442/12, 445/12, 446/12 and 447/12) I find that this series of offences arose out of a single course of criminal behaviour on the day in question. In this regard concurrent sentences are appropriate. The offence committed on 1st June 2012 is separate and distinct and the

sentence imposed will be consecutive to the said concurrent sentences. Again, the offence which occurred on 17th June 2012 is separate and distinct and the sentence imposed will run consecutive to the other two sentences.

[32] In the result I allow the appeals against sentence in the cases 442/12, 443/12, 444/12, 445/12 446/12 and 447/12. In each case the charge was one of stealing. I quash the sentences of four years imprisonment imposed in each case. In their place I impose the following sentences:

[33] In respect of the case number 442/12 I impose a sentence of six years six months imprisonment;

[34] In respect of the case number 445/12 I impose a sentence of six years six months imprisonment;

[35] In respect of the case number 446/12 I impose a sentence of six years six months imprisonment;

[36] In respect of the case number 447/12 I impose a sentence of six years six months imprisonment.

[37] The above sentences will be CONCURRENT and hence the total sentence in respect of the above offences will be six years six months imprisonment.

[38] The Appellant re-offended on 1st June 2012 and in respect of case number 443/12 I impose a sentence three years three months imprisonment.

[39] Within another sixteen days the Appellant again re-offended and in respect of case number 444/12 I also impose a sentence of three years three months.

[40] The sentence of six years six months imprisonment imposed on the Appellant for case numbers 442/12, 445/12, 446/12 and 447/12 is ordered to be served consecutively to the sentence of three years three months imprisonment imposed in respect of case number 443/12 and the total sentence as aforesaid is ordered to be served consecutively to the further sentence of three years three months imprisonment imposed in respect of case number 444/12.

[41] Accordingly the total term of imprisonment imposed on the Appellant is thirteen years.

Signed, dated and delivered at Ile du Port on 6 August 2014

C McKee
Judge of the Supreme Court