

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 04/2013

Appeal from Magistrates Court decision 625/2012

[2014] SCSC

AADIL ISAAC

Appellant

versus

THE REPUBLIC

Heard: 3 July 2014, 30 April 2014

Counsel: Mr. Nichol Gabriel Attorney at Law for Appellant

Mrs. Lansinglu Rongmei, Assistant Principal State Counsel for
the Republic

Delivered: 21 October 2014

JUDGMENT

Burhan J

[1] This is an appeal against sentence.

[2] The Appellant was charged in the Magistrates' Court as follows-

Count 1

Escape from lawful custody Contrary to and Punishable under Section 116 (2) of the Penal Code.

The particulars of offence are that Aadil Isaac, residing at Barbarons, Mahe, on the 14th September 2012, after an order made by the court and whilst in the lawful police custody of Police Constable Joachim Rose, at the Central police station, escaped from such custody.

[3] The Appellant was convicted on his own plea of guilt and sentenced to a term of 5 years imprisonment.

[4] Learned counsel for the Appellant seeks to appeal against sentence on the following grounds-

a) *“The sentence imposed by the learned Magistrate is wrong in law in view that the Appellant was on a warrant of arrest before the Family Tribunal and not before a court of law.*

b) *The sentence of 5 years is manifestly harsh and excessive in view that the Appellant had no previous convictions for similar offences”*

[5] Section 116 (2) of the Penal Code reads as follows;

“Notwithstanding subsection (1), any person who whilst under lawful custody under an order made by the court escapes from such custody is guilty of an offence and is liable to imprisonment for a term of not less than 5 years.”

[6] Learned counsel for the Appellant contended that the sentence imposed by the learned Magistrate was wrong in law as the Appellant had escaped from lawful custody on a warrant of arrest issued under an order made by the Family Tribunal and not a Court and therefore section 116 (2) of the Penal Code was not applicable.

[7] However when one considers the jurisdiction of the Family Tribunal as set out in section 78 of the Children Act CAP 28, section 78 (2) (c) states that the Tribunal shall be deemed to have all the functions of the Supreme Court. Further sections 6 (3) and 78 A (7) of the Act are offence creating sections granting powers to the Tribunal to impose terms of imprisonment. Section 78 A (1) empowers the Tribunal to issue summons and Section 78 A (8) of the Act empowers the Tribunal to issue warrants and it is specified that a warrant

of arrest issued shall be *deemed to be* a warrant of arrest *under the Criminal Procedure Code* (emphasis added).

- [8] Under the Criminal Procedure Code warrants of arrest are issued by Judicial officers of competent Courts. Therefore the warrant of arrest issued by the Tribunal in accordance with section 78 (A) (8) of the Children Act, must be deemed to be a warrant of arrest issued by a competent Court. Therefore the contention of learned counsel that section 116 (2) is not applicable, bears no merit.
- [9] Learned counsel for the Appellant has also contended that the sentence imposed by the learned Magistrate is harsh and excessive.
- [10] In the case of ***Godfrey Mathiot v Republic SCA 9/1993***, the Seychelles Court of Appeal held that in sentencing, courts should consider the principles of retribution, deterrence, prevention and rehabilitation. It further held that in appeals in respect of sentencing, the court would intervene only where-
- a) *the sentence was harsh, oppressive or manifestly excessive.*
 - b) *the sentence was wrong in principle.*
 - c) *the sentence was far outside discretionary limits*
 - d) *a matter had been improperly taken into consideration or a matter that should have been taken into consideration was not or,*
 - e) *the sentence was not justified by law.*
- [11] The learned Magistrate has sentenced the Appellant to a term of 5 years imprisonment which is in accordance with section 116 (2) of the Penal Code. Being the minimum mandatory term of imprisonment prescribed by law, it cannot be said that the sentence was not justified by law or far outside the discretionary limits of the learned Magistrate as she is empowered under section 6 (2) of the Criminal Procedure Code to sentence accordingly.

[12] On considering the plea in mitigation, I see no special reasons for court to have imposed a term lesser than the minimum mandatory term prescribed by law. Further I have observed that the learned Magistrate Miss. L. Pillay has made order that the term run concurrently with the term of imprisonment he is presently serving. I am of the view that the learned Magistrate has given due consideration to his plea in mitigation in ordering that the term of 5 years imprisonment run concurrently with the term of imprisonment he is serving.

[13] For the aforementioned reasons the sentence imposed by the learned Magistrate cannot be said to be harsh and excessive. The appeal against sentence stands dismissed.

Signed, dated and delivered at Ile du Port on 21 October 2014

M Burhan
Judge of the Supreme Court