IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 8/2012

Appeal from Magistrates Court decisions 315/11, 316/11, 627/11, 628/11, 629/11 and 630/11.

[2014] SCSC 415

PETER PHILOE

AppellantVersus

THE REPUBLIC

Heard: 17 January 2014

Counsel: Mr. Nichol Gabriel for appellant

Mr. Ananth Subramaniam, State Counsel for the Republic

Delivered: 5 November 2014

JUDGMENT

McKee J

[1] The Appellant entered Appeals against Sentence in respect of six cases relating to offences of dishonesty.

[2] Counsels have been helpful in arranging the case files in good order.

[3] The cases are better understood by recording their magistrate court numbers in the order of the dates when the offences occurred with a note of the offences in each case.

[4] **Case No 316/2011.** Date of offences – 28th December 2010.

Count 1- Housebreaking and Count 2 – Stealing from a dwelling house.

[5] **Case No 315/2011.** Date of Offences – 15th March 2011

Count 1 – Housebreaking and Count 2 – Stealing from a dwelling house.

[6] **Case No 630/2011.** Date of offences – 13th August 2011.

Count 1 – Housebreaking and Count 2 – Stealing from a dwelling house.

[7] **Case No. 628/2011.** Date of offence – 21st August 2011.

Count – "Attempted Burglary".

[8] **Case No. 627/2011.** Date of offences – 4th September 2011.

Count 1 – Burglary, Count 2 – Stealing from a dwelling house and Count 3

- Stealing from a dwelling house.

[9] **Case No. 629/2011.** Date of Offence – 4th September 2011.

Count - "Attempted Burglary".

[10] Each case was brought before the Magistrate in the normal way and was continued to one date when the Appellant indicated that he wished to tender pleas of Guilty in relation to all the charges.

[11] In cases **315/11, 630/11, 628/11, 627/11 and 629/11** the Magistrate followed his normal procedure. The individual charges were read to the Appellant and he tendered pleas of Guilty to all of the counts in each case file. The Appellant agreed the brief facts in respect of the circumstances of each offence in these 5 cases, and the Appellant was formally convicted of the charges.

[12] Defence Counsel and State Counsel drew my attention to the particular circumstances surrounding case **316/11**. It was agreed by both counsel in the appeal that the Record showed that Magistrate had omitted to take a plea in respect of both charges and to obtain the agreement of the Appellant to the brief facts. Furthermore the Magistrate had not made a finding of guilt nor had he recorded a conviction. I agree with Counsels' joint

submission that this was an oversight which arose simply because of the number of case files before him. However the Magistrate had proceeded to sentence the Appellant for the two counts in this case file. Both Counsel agreed that any purported convictions and sentences should be quashed. Counsel for the State submitted that the defect was curable and this court could order a retrial before another magistrate. He produced a number of authorities to the court. Mr Gabriel submitted that the failure to take the plea and the other consequential omissions were fatal to the case and a re-trial was inappropriate.

[13] I find that the failure to take a plea and to impose a conviction results in a breach of sections 181[1] and 181[2] of the Criminal Procedure Code of Seychelles.

[14] I have considered the authorities produced by State Counsel. The cases of Ramgoolam, Camille, Marie and Adam suggest that, according to the particular circumstances of a case, the failure to record a conviction is curable if it can be done without injustice to the Appellant. In the Rangoolam case it is recorded that a plea was taken but the other three cases are silent on this issue. I would have expected that if these Records had indicated also an absence of plea that this would have been mentioned in the judgments. These cases turn on the absence of specific wording imposing a conviction.

[15] These four cases can be distinguished from the cases of Tahal and Babeea. The appeal judgments in the Tahal and Babeea cases, which were on appeal in Mauritius, focus on the issue of absence of plea. The thrust of each judgment was that an invitation to plead is not a mere formality but went to the very root of the case. In each of the cases the Record indicated that no plea had been taken. This resulted in each appeal being allowed and the conviction and sentence quashed. No re-trial was ordered in either case.

[16] The findings in the Tahal and Babeea cases are pertinent to the consideration of the present case under appeal. It is agreed by Prosecution and Defence that the Appellant was not invited to tender a plea of Guilty or Not Guilty to the charges. In my view this failure went to the very root of the case. I elect to follow the reasoning in the Tahal and Babeea cases.

[17] Consequently I allow the appeal in case **316/11** and quash any purported convictions and the sentences imposed. I have considered the application for a re-trial. In the circumstances I find that the failure to take a plea is so fundamental an issue that now it would be contrary to the interests of justice to proceed again by way of re-trial. I refuse the application.

[18] I refer now to **case No. 315/11.** Mr Gabriel has advised the court that the Appellant is not pursuing this appeal and accordingly the convictions for the two offences and the individual and aggregate sentences shall stand.

[19] I now look at cases **630/11, 628/11, 627/11 and 629/12.** In each case the Appellant was convicted on the various counts after his pleas of guilty and agreement to the brief facts. The offences occurred within the period 13th August to 4th September 2011, a period of some three weeks. All the offences were similar in nature, namely, housebreaking and stealing, burglary and stealing, and attempted burglary. In the case of housebreaking and stealing [No 630/11] which occurred on 13th August 2011 electronic items of high value and cash were taken. These items were not recovered. In the case of burglary and stealing [No 627/11] which occurred on 4th September 2011, items of jewellery, a camera and cash were taken. Again none of the items were recovered. All offences occurred in the southern district of Mahe.

[20] A list of previous convictions was produced to the Magistrate. This showed three previous convictions for offences of dishonesty, namely, stealing.

[21] The Magistrate imposed the following sentences in the following order:

[22] **Case No. 630/11. House breaking** – 3 years imprisonment.

Stealing – 4 years imprisonment.

The sentences were ordered to be served concurrently and hence the total term of imprisonment was 4 years.

[23] **Case No. 628/11. Attempted Burglary** – Sentence - 2 years imprisonment.

[24] **Case no. 627/11. Burglary** – 3 years imprisonment

Stealing – 2 years imprisonment

The sentences were ordered to be served concurrently and hence the total term of imprisonment was 3 years.

[25] **Case No 629/11. Attempted Burglary** – 2 years imprisonment.

[26] I also record the sentences imposed in Case No. 315/11.

Housebreaking – 2 years imprisonment

Stealing -1 year imprisonment.

[27] The sentences were ordered to be served concurrently and hence the total term of imprisonment was 2 years.

[28] The Court further ordered that the "total" sentences imposed in each of the 6 cases files should be **CONSECUTIVE** and hence the total term of imprisonment imposed was 17 years. In view of my finding in respect of Case No.316/11 at paragraph 17 I can disregard the sentence of 4 years imprisonment imposed in respect thereof. The cumulative sentence in respect of the five remaining cases is 13 years imprisonment.

[29] The Magistrate has given detailed reasons for sentence. He has taken into account that the Appellant pleaded guilty to all the charges thus saving the Prosecution considerable time and expense. He has imposed concurrent sentences where he considered it was warranted. He has kept in view the totality principle and the element of proportionality. He imposed consecutive sentences since all incidents were separate and distinct. He imposed concurrent sentences where two offences were charged but arising from the same

transaction. Short consecutive sentences were imposed in respect of Cases Nos. 627/11 and 629/11 although the offences were committed on the same date, 4th September 2011. I find no fault with this approach since the cumulative sentence of 5 years imprisonment for the offences committed on that date is fully warranted.

[30] In the result, I am satisfied that neither the individual sentences nor the total sentence imposed on the Applicant in respect of cases **315/11, 630/11, 628/11, 627/11 and 629/11** are wrong in principle or are manifestly excessive. Indeed they are entirely apposite. There is no merit in the grounds of appeal in respect of these cases and accordingly these appeals are dismissed. The appeal in case 316/11 is allowed. The Appellant will serve a total sentence of 13 years imprisonment in respect of the said 5 cases where the appeals are dismissed.

[31] The Magistrate has already made the usual order with regard to time spent in custody on remand in the Warrant of Commitment dated 13th February 2012.

Signed, dated and delivered at Ile du Port on 5 November 2014

C McKee
Judge of the Supreme Court