

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 91/2013

Appeal from Magistrates Court decision 305/2012

[2015] SCSC 182

SAMUEL ESPARON

Appellant

versus

THE REPUBLIC

Respondent

Heard: 10 November 2014

Counsel: Mrs. Alexia Amesbury Attorney-at-Law for Appellant

Ms. Emilie Gonthier, State Counsel for the Respondent

Delivered: 16 June 2015

JUDGMENT

Burhan J

[1] This is an appeal against sentence.

[2] The Appellant in this case was charged with another in the Magistrates' Court as follows:

Count 1

Attempted Housebreaking Contrary to and Punishable under Section 289 (a) read with section 23 and section 377 of the Penal Code.

The particulars of offence at that Samuel Esparon and Stephen Nourrice both residing at Anse Aux Pins on the 17th day of November, 2011, at Fairyland, Mahe attempted to break and enter into the dwelling house of Magarette D'offay with intent to commit a felony therein namely stealing.

Count 2

Criminal Trespass Contrary to Section 294 (2) read with Section 23 of the Penal Code.

The particulars of the offence are that Samuel Esparon and Stephen Nourrice both residing at Anse Aux Pins, Mahe on the 17th day of November, 2011, at Fairyland, Mahe enter upon property in the possession of another that is to say the yard of Mrs. Margaretta D'offay with intent to commit the offence of attempted housebreaking.

Count 3

Armed with intent to commit felony Contrary to and Punishable under Section 293 (d) read with Section 23 of the Penal Code.

The particulars of the offence are that Samuel Esparon and Stephen Nourrice both residing at Anse Aux Pins, Mahe, on the 17th day of November 2011, at Fairyland, was in possession of an instrument, namely a crowbar with intent to commit a felony.

[3] The Appellant was convicted on his own plea of guilt and sentenced on Count 1 to term of 2 years imprisonment, on Count 2 to a term of 3 years imprisonment and on Count 3 to a term of 6 years imprisonment. The learned Magistrate also made order that the terms of imprisonment run consecutively.

[4] The learned Magistrate had set out the sentence as follows:

“Count 1 to a term of 2 years immediate imprisonment

Count 2 to a term of 3 years immediate imprisonment

Count 3 to a term of 6 years immediate imprisonment”.

[5] The learned Magistrate also specifically stated thereafter that the sentences imposed should run consecutively. It is apparent that in ordering consecutive sentencing in one trial, the learned Magistrate was taking into consideration the provision contained in section 9 (1) of the Criminal Procedure Code.

[6] Section 9 (1) of the Criminal Procedure Code reads as follows:

(1) *“When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefore which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently”.*

[7] It is the contention of learned counsel for the Appellant that the word “immediate” implies that the terms should commence with immediate effect and therefore all 3 terms of imprisonment should run concurrently. It is the contention of learned counsel for the Respondent that as the learned Magistrate had stated consecutively, each term should commence at the expiration of the other and commence immediately thereafter.

[8] It is apparent that if the terms of imprisonment were to run consecutively, the Appellant would serve in total a term 11 years imprisonment. Whereas if the terms of imprisonment were to run concurrently, the Appellant would serve in total a term of 6 years imprisonment.

[9] The Seychelles Court of Appeal in the recent case of ***Roddy Lenclume vs The Republic Criminal Appeal SCA 32/2013*** held as follows:

“ It is our view that despite the fact that the Penal Code provided for a mandatory term of imprisonment of 10 years for burglary and section 9 of the Criminal Procedure Code provided as a rule that the sentences in case of conviction of several offences at one trial

should be consecutive; a Magistrate cannot exceed his powers of sentencing set out in section 6 (2) of the Criminal Procedure Code”.

[10] In its reasoning at paragraph 20 the Seychelles Court of Appeal further held that:

“We are also of the view the order made for the sentences of imprisonment of 10 years and 8 years to be executed consecutively on the Appellant who was 18 years old and a first time offender is grossly disproportionate to what would have been appropriate and tantamount to cruel and inhuman punishment in the circumstances”.

[11] In the said case the Seychelles Court of Appeal on considering the fact that the Appellant was 18 years old and the value of the items stolen being in one case SR 320 and the fact that the Appellant was a first offender in respect of the case 527/12, proceeded to reduce the sentences in each of the three cases and made further order that the sentences run concurrently resulting in the Appellant in that case having his sentence reduced from a total of 18 years to a total of 5 years imprisonment in all three cases he was convicted.

[12] In this instant case it was mentioned in mitigation that the Appellant was a first offender and had pleaded guilty thereby expressing remorse and saving the time of court.

[13] Having considered the aforementioned sentence imposed by the learned Magistrate, it is apparent the learned Magistrate had exceeded the power of sentencing of a Magistrate which is limited to imprisonment up to 8 years. Considering the fact the Appellant was a first offender and had pleaded guilty without going to trial saving the time of court and thereby expressing remorse and regret and expecting leniency from court and further, on consideration of the nature of the charges framed, this court is of the view a term of 6 years imprisonment in total would be a just and appropriate term of imprisonment for all three offences.

[14] Therefore the total term of 11 years imprisonment imposed by the learned Magistrate is quashed and a term of 6 years imprisonment substituted.

[15] The appeal against sentence is upheld accordingly.

Signed, dated and delivered at Ile du Port on 16 June 2015

M Burhan
Judge of the Supreme Court