

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 07/2015**

**Appeal from Magistrates Court decision 33/2015**

**[2016] SCSC**

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**CORENTINO BIBI**

Appellant

versus

**THE REPUBLIC**

Respondent

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Heard: 23<sup>rd</sup> July 2015 and 11<sup>th</sup> December 2015 (Written Submissions)

Counsel: Mr. Nichol Gabriel Attorney at Law for Appellant

Ms. Michelle St. Ange, State Counsel for the Republic

Delivered: 5 February 2016

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**JUDGMENT**

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Burhan J

[1] This in an appeal against sentence.

[2] The Appellant was charged in the Magistrates' Court with the following offence:-

## **Count 1**

*Stealing Contrary to Section 260 of the Penal Code.*

*The particulars of offence are that, Corentino Bibi residing at La Passe La Digue, on the 25<sup>th</sup> day of March 2015, at Anse Severe, La Digue, stole two Samsung mobile phones one black value 120 Euros and white value 100 Euros being the property of an Italian nationality namely Anna Bina.*

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

**[4]** Being aggrieved by the said sentence, learned counsel for the Appellant seeks to appeal on the following grounds:

**a)** *“The minimum mandatory sentence imposed by the learned Magistrate is manifestly harsh and excessive.*

**b)** *The learned Senior Magistrate failed to consider the fact that the Appellant has pleaded guilty to the charge.*

**c)** *The learned Senior Magistrate failed to consider the mitigating factors of the Appellant and the fact that the stolen items were retrieved.*

**[5]** The law relating to section 260 of the Penal Code reads as follows:

*“A person who steals anything capable of being stolen is guilty of the felony termed theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for seven years.”*

**[6]** It would be pertinent at this stage to also set down Section 27 (1) (a) (i) and (ii) of the Penal Code as amended by Act 5 of 2012.

*(1) Notwithstanding Section 26 and any other written law and subject to subsection (2), a person who is convicted of an offence in Chapter XXVI, Chapter XXVIII or Chapter XXIX shall –*

a) *where the offence is punishable with imprisonment for 7 years or more than 8 years and –*

i. *it is the first conviction of the person for such an offence, be sentenced to imprisonment for a period of not less than 5 years; or*

ii. *the person had within 5 years prior to the date of the conviction, been convicted of the same or a similar offence, be sentenced to imprisonment for a period of not less than 10 years.*

[7] Therefore on considering the fact the Appellant had a previous convictions within the 5 year period, the learned Senior Magistrate could have imposed a term of 10 years imprisonment as referred to above which was the minimum mandatory term of imprisonment prescribed by law.

[8] The learned Magistrate however, after considering the facts set out in the plea in mitigation, proceeded to sentence the Appellant to a term of 5 years imprisonment.

[9] It is apparent as borne out by the proceedings that the previous conviction record of the Appellant had been filed in the Magistrates' Court but had got misplaced since the appeal was filed.

[10] On the instructions of this Court, a copy of the misplaced previous conviction record filed in the Magistrates' Court was tendered by learned counsel for the Respondent which was admitted by the Appellant in open court. It is apparent that the Appellant had a recent conviction in the year 2012, in respect of the same offence of Stealing and had been sentenced to a term of three years imprisonment in the said case and had another previous conviction in respect of the offence of House breaking in the year 2011 which on considering his reasoning, appears to have been overlooked by the learned Magistrate.

[11] The learned Magistrate having referred to several aggravating circumstances peculiar to this case, sought to impose a term of 5 years imprisonment even though according to the prevailing law as set out herein, the Appellant could have been subject to a minimum mandatory term of 10 years imprisonment. However, I note that learned counsel for the

Respondent in her submissions is not seeking and does not intend seeking, an enhancement of sentence by way of an application for revision.

[12] Therefore learned counsel for the Appellant cannot seek to complain that the sentence imposed by the learned Magistrate was harsh and excessive.

[13] Learned counsel for the Appellant next ground of appeal is that the learned Magistrate failed to give consideration to the fact that the Appellant had pleaded guilty. No doubt it would be unfair to impose the maximum sentence prescribed by law, when an offender pleads guilty *R v Barnes 5 Cr.App.R (S.) 368 CA and R v Green 14 Cr.App.R. (S.) 682 CA*. A person who pleads guilty to a charge would normally expect some recognition in the form of a reduction in sentence. In this instant case, the learned Magistrate has imposed a sentence of half the minimum mandatory (emphasis added) prescribed by law.

[14] Considering the antecedents of the Appellant, the severity of the penalty prescribed by law for such repeat offender, the sentence of 5 years imposed by the learned Magistrate in the view of this court, does not warrant any further leniency in appeal.

[15] The appeal against sentence is therefore dismissed.

Signed, dated and delivered at Ile du Port on 5 February 2016

M Burhan  
**Judge of the Supreme Court**