

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 04/2015

Appeal from Magistrates Court decision 468/2014

[2016] SCSC 870

DERECK VEL
Appellant

versus

THE REPUBLIC

Heard: 7 November 2016

Counsel: Mr. Leslie Boniface Attorney at Law for appellant

Mr. Khalyaan Karunakaran, State Counsel for the Republic

Delivered: 11 November 2016

JUDGMENT

Burhan J

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

Count 1

Housebreaking Contrary to Section 289(a) of the Penal Code

Particulars of offence are that Dereck Vel, 32 years old, residing at Les Mamelles, Mahe on the 4th day of July 2014 at, Perseverance, Mahe broke and entered into the dwelling house of Lucille Felix, with intent to commit a felony therein namely stealing.

Count 2

Stealing from dwelling house Contrary to Section 260 and Punishable under Section 264 (b) of the Penal Code.

Particulars of offence are that, Dereck Vel, 32 years old, residing at Les Mamelles, Mahe on the 4th day of July 2014 at, Perseverance, Mahe stole from the dwelling house of Lucille Felix, one white Ipad make Samsung Galaxy' and Rs.300/- in one hundred rupee notes being the property of Rashield Felix.

- [2] The Appellant was convicted on his own plea of guilt and sentenced to a term of 4 years imprisonment on Count 1 and to a term of 3 years imprisonment on Count 2. The learned Magistrate made further order that both terms run consecutively.
- [3] It is apparent from his order that the learned Magistrate had addressed his mind to the case of *Jean Frederick Ponoo v The Attorney General SCA 38/2010* and proceeded to impose terms of imprisonment less than the minimum mandatory terms provided for by law. Therefore it cannot be said the learned Magistrate was harsh and excessive.
- [4] However, considering the fact that the offences were committed in the course of the same transaction, it would be appropriate that the terms of imprisonment imposed by the learned Magistrate, be made to run concurrently and not consecutively as held in the cases of *Christopher Dorizo v The Republic SC Cr Appeal 15 of 2008* and *Roddy Lenclume v The Republic Criminal Appeal SCA 32/2013*.
- [5] This Court would therefore proceed to vary the order of the learned Magistrate and make order that the terms of 4 years imprisonment and 3 years imprisonment imposed on Counts 1 and 2 respectively run concurrently and not consecutively. Therefore in total the Appellant would serve a term of 4 years imprisonment.

[6] A copy of this order to be served on the Superintendent of Prisons and his warrant of commitment adjusted accordingly.

Signed, dated and delivered at Ile du Port on 11 November 2016

A handwritten signature in blue ink, followed by the date "11/11/2016" written vertically in blue ink.

M Burhan
Judge of the Supreme Court