IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 10/2016

Appeal from Magistrates Court decision 11/2014

[2018] SCSC

ANDY MERITON

Appellant

versus

THE REPUBLIC

Heard:	30th November 2017
Counsel:	Mr. Danny Lucas for appellant
	Ms Amanda Faure for the Respondent
Delivered:	22nd January 2018

....

SENTENCE

....

Nunkoo J

[1] The Appellant was charged of the following offences:

(a) Housebreaking contrary to and punishable under section 289(a) of the penal code.

(b) Stealing from dwelling house contrary to and punishable under section 264(b) of the Penal Code.

[2] The Appellant pleaded guilty and was accordingly convicted.

[3] In mitigation his lawyer pleaded that Appellant had pleaded guilty, was only 29, had shown remorse and that most of the articles stolen had been retrieved. . Learned counsel

also urged the court to take into account the principle of totality and proportionality and hence the sentences to run concurrently with a sentence of three years that Appellant was already serving.

[4] He was sentenced to 5 years on count one and to 4 years on count 2. The Learned magistrate also ordered that both sentences were to run concurrently and would begin at the end of the three year sentence that Appellant was already serving. He also ordered that time served on remand would be deducted from the sentence.

[5] The Appellant has appealed on the following grounds:

(i) The sentence was wrong in law and in principle.

(ii) The Learned Magistrate erred in principle in that he failed to give due weight to the mitigating factors in favour of the appellant and take into account and take(sic) into account matters which should have been taken into consideration when sentencing the appellant.

(iii) The Learned Magistrate erred in that he took into account matters which he should not have when sentencing appellant.

(iv) In all the circumstances of the case the sentences should have been made to run concurrently with the existing sentence.

(v) In all the circumstances of the case the sentence is harsh and manifestly excessive.

6. Learned counsel for the Appellant in his submissions seem to suggest that the count was defective in that the Learned Magistrate convicted the Appellant on the count of stealing by servant and sentenced him on that basis. In his ground of appeal Learned Counsel has submitted that the Learned Magistrate took matters into account that he should not have taken.

7. I propose to deal with this first. I have gone through the record. The appellant was in fact charged of the offences mentioned above; he pleaded guilty to them. The learned Magistrate whilst sentencing does say the following:

"I also take notice that at the time the accused committed the offence, he was working at Lemuria Resort. Thus he stole by servant too. However, I would, given the whole circumstances of the offence and the offender, not impose the minimum mandatory sentence of eight years. Furthermore, I take notice that the convict is already serving a term of imprisonment of 3 years. For that reason I will also consider the principle of totality in sentencing.. and the two sentences shall run concurrently …"

8. It is clear that he was referring to the sentence prescribed for the offence of which he was charged when he referred to the mandatory sentence of eight years.

9. The Republic represented by Mrs Faure is maintaining that the sentence is fair and has submitted that the Learned Magistrate did take into account several factors in favour of the Appellant.

10. The Learned magistrate cannot be faulted whether as regards the conviction on the charges before him nor as regards the sentence imposed.

11. However, in view of the young age of the Appellant I order that the sentence of five years shall run concurrently with the sentence of three years that Appellant is serving.

Signed, dated and delivered at Ile du Port on 22nd January 2018

S Nunkoo
Judge of the Supreme Court