

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 30/2017**

**Appeal from Magistrates Court decision 207/2015**

[2018] SCSC 466

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**CHRISTOPHER PAYET**

Appellant

versus

**THE REPUBLIC**

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Heard: (parties filed written submission)

Counsel: Mr. N. Gabriel for appellant

Mr. R. Laporte, Assistant State Counsel for the Republic

Delivered: 22 May 2018

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**JUDGMENT**

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**Vidot J**

[1] The Appellant was charged and convicted of 2 counts, namely; (i) Housebreaking contrary to and punishable under Section 289 (a) of the Penal Code and (ii) Stealing from a dwelling house contrary to and punishable under Section 264 (a) of the Penal Code. He was convicted on his own guilty plea.

[2] On 28<sup>th</sup> September 2017, Learned Magistrate A. Asba sentenced him to 3 years imprisonment for the offence of house breaking and 2 years for the offence of stealing from a dwelling house. It was further ordered that the sentences would run concurrently.

[3] On 31<sup>st</sup> October 2017, the Appellant filed a Notice of Appeal against sentence. On 16<sup>th</sup> April 2018, the Counsel for the Appellant filed a Memorandum of Appeal with one ground of appeal that reads as follows;

*“The Learned Magistrate erred in omitting to order that time spent on remand shall be deducted from the sentence of 3 years imposed on the Appellant”*

[4] I note that the Notice of Appeal was filed out of the prescribed 14 day period. The Respondent did not take issue with that, I shall condone this delay because I take judicial notice that the Appellant was in prison and therefore was dependent on the Prison Authorities to ensure that his Notice of Appeal was filed within the legal prescribed period. Furthermore, the delay was not excessive and it is only fair and just and the interest of justice that this delay is overlooked.

[5] In his written submission, Counsel for the Appellant merely rehearsed the ground of appeal and calculated the number of days that the Appellant spent of remand to 371 days. However, he did not make any submission pertaining to the legal basis on which that ground of appeal is rooted.

[6] Counsel for the Respondent, acceding to the appeal, however provided the legal basis in support of the ground of appeal. He correctly referred to Article 18 (14) of the Constitution which provides as follows;

*“Where a person is convicted of any offence, any period which the person has spent in custody in respect of the offence shall be taken into account by the Court in imposing sentence of imprisonment for the offence”*

[7] From the aforementioned Article 18 (14), it is evident that the Learned Magistrate erred in not taking into account the time the Appellant spent on remand when imposing sentence.

Therefore, I allow the appeal and order that the time that the Appellant spent on remand is deducted from his sentence of 3 years.

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



M Vidot

**Judge of the Supreme Court**

