

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 709
J10/2019,J9/2018,J10/2019
J12/2019,J13/2019,J14/2019
J10/2018

In the matter between:

THE REPUBLIC

(rep. by Mrs Stella Napier)

and

E W

(rep. by Nichol Gabriel)

Accused

Neutral Citation: Republic v *EW J10/2018*), 9/2018,J10/2019,J12/2019,J13/2019,J14/2019
[2019] SCSC 709 (22 August 2019).

Before: Govinden J

Summary:

Heard: 25 July 2019

Delivered: 22 August 2019

SENTENCE

GOVINDEN J

[1] The convict in this case, being Mr EW of Copolia, Mahe Seychelles has pleaded guilty to the following offences.

J10/2019

Count 1

Statement of Offence

House breaking contrary to and punishable under Section 289(a) of the Penal Code.

Particulars of Offence

EW, residing at Copolia, Mahe on the 10th day of April 2019, at Copolia, Mahe broke and entered the house of Marie Ange Orphe and stole one flat screen TV, to the value of SCR2800, one tablet make Galaxy to the value of SCR3000, one mobile phone, one jacket and a white headphone belonging to one Randy Dugasse.

J9/2018

Count 1

Statement of Offence

House breaking contrary to and punishable under Section 289(a) of the Penal Code.

Particulars of Offence

EW, 15 years old, residing at Copolia, Mahe, on the 17th of July 2017 at Copolia, broke and entered into the dwelling house of Wiliana Aglae, with intent to commit a felony therein, stealing.

Count 2

Statement of Offence

Stealing from dwelling house, contrary to Section 260 read with Section 264(b) and punishable under Section 264 of the Penal Code Cap 58.

Particulars of Offence

EW, 15 years old, at Copolia, Mahe, on the 17th of July 2017 at Copolia, Mahe, stole from the dwelling house of Wilna Aglae, 1 external drive mark transcendent 2 tb value at SCR2450 being the property of Angelique Aglae daughter of Wilna Aglae of Copolia.

J13/2019

Count 1

Statement of Offence

Housebreaking contrary to and punishable under Section 289(a) of the Penal Code Cap 158.

Particulars of Offence

EW, residing at Copolia, Mahe on the 13th of May 2019 at Copolia, Mahe, broke and entered into the dwelling house of Vianna Edmond by means of breaking the living room door, with intent to commit a felony therein namely stealing.

Count 2

Statement of Offence

Stealing from dwelling house, contrary to Section 260 read with Section 264(b) and punishable under Section 264 of the Penal Code (Cap 158).

Particulars of Offence

EW residing at Copolia, Mahe, on the 13th of May 2019 at Copolia, Mahe, stole from the dwelling house of Viana Edmond 1 flat screen television make Philips 40 inches value at SCR 4700, 1 pen drive 16 GB value SCR 475, 50 packets of fruit juice mixed with milk value at SCR350, 1 external hard drive make HK Vision value at SCR1500, 1 camera decoda make HK Vision value SCR10,050, 1 flat screen television make LG 12 inches value SCR1900, 1 flat screen television make Panasonic 32 inches value at SCR3000 being the property of the said Viana Edmond.

J12/2019

Count 1

Statement of Offence

Housebreaking, contrary to and punishable under Section 289(a) of the Penal Code.

Particulars of Offence

EW residing at Copolia, Mahe, on the 8th of May 2019 at Copolia, Mahe, broke and entered into the dwelling house of Marie Antoinette Victor, by means of removing two

louver blades from the bathroom window with intent to commit a felony therein namely, stealing.

Count 2

Statement of Offence

Stealing from dwelling house contrary to Section 260 read with Section 264(b) and punishable under Section 264 of the Penal Code.

Particulars of Offence

EW, residing at Copolia, Mahe, on the 8th of May 2019 at Copolia, Mahe, stole from the dwelling house of Marie Antoinette Victor, 1 flat screen television mark Samsung 42 inches value at SCR4000, 1 flat screen television mark Samsung value at SCR3000, 1 perfume value at SCR300, being the property of the said Marie Antoinette Victor.

J14/2019

Count 1

Statement of Offence

Housebreaking contrary to and punishable under Section 289(a) of the Penal Code.

Particulars of Offence

EW, residing at Copolia, Mahe, on the 11th of May 2019, at Copolia, Mahe broke and entered into the dwelling house of Francis Pompe by means of removing 2 louver blades from a bedroom window, with intent to commit a felony therein namely, stealing.

Count 2

Statement of Offence

Stealing from dwelling house, contrary to Section 260 read with Section 264(b) and punishable under Section 264 of the Penal Code.

Particulars of Offence

EW, residing at Copolia, Mahe, on the 11th of May 2019 at Copolia, Mahe stole from the dwelling house of Francis Pompe 1 flat screen television make LG, 24 inches value at SCR4500, 1 music mixer value SCR5500, 1 box containing gold and silver jewellery value at SCR30,000, 1 mobile phone make Nokia window, value at SCR5,500 being the property of the said Francis Pompe.

J10/2018

Count 1

Statement of Offence

Assault on a Police officer, contrary to Section 283(b) of the Penal Code.

Particulars of Offence

EW, 15 years old, residing at Copolia, Mahe, on the 2nd day of March 2018 at Corgate Estate, Mahe assaulted a Police officer namely WPC Yana Dupres, by means of dragging the said officer on the ground whilst she was in the due execution of her duties, thereby causing her injury on both hands and knees.

Count 2

Statement of Offence

Escape from lawful custody, contrary to Section 116(1) and punishable under Section 55 of the Penal Code.

Particulars of Offence

EW, 15 years old, residing at Copolia, Mahe, on the 2nd of March 2018 at Corgate Estate, Mahe whilst in custody of Police officer WPC Yana Dupres escaped from such custody.

[2] The facts of the case as read by the Learned Prosecutor and admitted by the convict shows that in the case J10/2019 all the items stolen were recovered by the Police, in J9/2018 the items were not recovered, in J13/2019 one of the items the television LG 24 inches valued at Rs4500 was recovered, in J12/2019 none of the items were recovered, in J14/2019 none of the items were recovered.

[3] Upon the convict unequivocally pleaded guilty to the charges found in the different cases this Court has convicted him on his own guilty pleas.

[4] The Learned Counsel for the convict Mr Gabriel informed the Court following the pleas of his client that he wants to request for Probation Report in each of the respective cases this in order to allow him to better mitigate the sentence in favour of his client. The Probation Services Report sought were received by this Court and the recommendation of the Probation Services in respect of each cases were as follows:-

J10/19

The Probation Services recommended that a minimum custodial sentence be imposed on the accused. In addition the accused be also ordered to pay compensation and that he is also ordered to engage in a drug rehabilitation programme within the Prison system.

J9/2018

It recommended that the accused in this case be enrolled on a skill development programme for youths by the Employment Department. Such programme according to the Report will enable the accused to gain and develop necessary employability skills which will keep him in secured employment.

J13/2019

The Probation Services recommended that a suspended sentence and a fine be imposed on the accused, in which his guardian be made to settle the said payment on the accused behalf.

J12/2019

It recommended a suspended sentence and a fine be imposed on the accused person in which the guardian be made to settle the said payment on the behalf of the accused person.

J10/2018

In this case the Probation Services recommended that the accused be placed on Probation supervision.

J14/2019

Probation Services recommends that a minimum custodial sentence be imposed on the accused and that his guardian be made to settle the whole of payment of a fine to be imposed upon the accused person.

- [5] The learned Counsel for the convict upon being appraised of the recommendation of the Probation Services made the following mitigation in favour of the convict.

In respect of the Probation Services recommendations learned Counsel recommended that the sentences be suspended. He does not favour a fine to be paid as according to him the convict will not be able to meet the payment of a fine and neither will his guardian and custodian as his adopted mother is an elderly person and is a pensioner.

- [6] The Learned Counsel also favour a drug rehabilitation programme as recommended by the Probation Services.

- [7] Besides not being in favour of the minimum custodial sentence being imposed as proposed by the Probation Services in J14/2019, the Learned Counsel otherwise support all the Probation Services recommendation.

- [8] In further mitigation Learned Counsel submitted that the convict is an adopted child. According to him he was taken under the custody of his adopted mother as his mother was convicted and sentenced in a drug related case. According to him all in all there are 8 other siblings in the convict household and that the Court should assist the convict in getting a secured employment maybe in the Fisheries Sector. And at any rate it is learned Counsel's mitigation that the remand of the accused and his time spend of on remand be offset against any possible sentence to be imposed by this Court.

- [9] We have considered the submissions of Counsel in favour of a mitigation in this case. We have considered the seriousness of the offences charged both in term of the law and

the facts of these cases. We have taken into consideration the recommendation of the Probation Services.

[10] Having done so we considered there are some mitigatory circumstances in the matter.

(1) The convict was a juvenile at the time of the commission of the offences.

(2) The convict pleaded guilty and has saved the precious time of this Court.

(3) In certain instances the items stolen were fully recovered by the Police.

(4) The convict comes from a social background that could have created an environment conducive to criminality with an absent mother and an overwhelmed adopted mother.

(5) The plea of guilty by the convict shows remorse as to the commission of the offences that he has committed.

[11] Nonetheless we consider that there are certain aggravated circumstances in the matter

(1) Many of the valuable items stolen were never recovered by the Police.

(2) The offence of housebreaking contrary to Section 289(a) of the Penal Code carries with it a minimum mandatory sentence.

(3) It appears that the convict has engaged himself in a spree of serious offences within a short period of time. It appears that he has convicted six felonies within a space of 3 years.

(4) The convict was sentenced for an offence of housebreaking contrary to Section 289(a) and stealing contrary to Section 264 of the Penal Code on the 30th of August 2018 to 2 years probation and 60 hours of community services.

(5) He has committed some of the offences that he has pleaded guilty to before this Court when he was undergoing this probation period.

Bearing in mind all of the above factors and taking cognisance of Section 94(2) of the Children's Act, we are of the view that the convict should be sentenced to imprisonment

as he cannot be suitably dealt with in any other ways under the Children's Act. We therefore sentence him as follows:-

J10/2019

For committing the offence of housebreaking contrary to and punishable under Section 289(a) of the Penal Code in Count 1, he is to serve 5 years imprisonment.

For committing the offence of stealing contrary to and punishable under Section 264(b) of the Penal Code under Count 2, he is sentenced to 3 years imprisonment.

J19/2018

For committing the offence of house breaking contrary to and punishable under Section 289(a) of the Penal Code in Count 1, the convict is sentenced to 5 years imprisonment.

For committing the offence of stealing from a dwelling house, contrary to Section 260 as read with Section 264(b) and punishable under Section 2694 of the Penal Code, he is sentenced to 3 years imprisonment.

J13/2019

For committing the offence of housebreaking, contrary to and punishable under Section 289(a) of the Penal Code under Count 1, the convict is sentenced to 5 years imprisonment.

For committing the offence of stealing from a dwelling house contrary to Section 260 as read with Section 264(b) and punishable under 264 of the Penal Code, the convict is sentenced to 3 years imprisonment.

J12/2019

For committing the offence of housebreaking contrary to and punishable under Section 289(a) of the Penal Code in Count 1, the convict is sentenced to 5 years imprisonment.

For committing the offence of stealing from a dwelling house contrary to Section 260 as read with Section 264(b) and punishable under Section 264 of the Penal Code under Count 2, the convict is sentenced to 3 years imprisonment.

J14/2019

For committing the offence of housebreaking contrary to and punishable under Section 289(a) of the Penal Code in Count 1 the convict is sentenced to 5 years imprisonment.

For committing the offence of stealing contrary to and punishable under Section 264(b) of the Penal Code under Count 2, the convict is sentenced to 3 years imprisonment.

J10/2018

For committing the offence of assault on a Police officer contrary to Section 238(b) of the Penal Code in Count 1, the convict is sentenced to 3 years imprisonment.

For committing the offence of escaping from lawful custody contrary to Section 116(1) and punishable under Section 116 of the Penal Code, he is sentenced to 5 years imprisonment.

- [12] All sentences of imprisonment are to run concurrently with one another.
- [13] All time spend on remand shall be deducted from the sentence.
- [14] The convict shall undergo an in house drug rehabilitation programme presently existing within the Montagne Posee Prison system.
- [15] The convict has one month to appeal against the sentence to the Supreme Court

Signed, dated and delivered at Ile du Port on 22nd August 2019

Govinden J
Chairperson

Ms Elizabeth
Member

Mr Delcy
Member