

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 511

CN06/2019 CN07/2019, CN08/2019,
CN09/10 AND CN10/2019)

(Appeal from Magistrates' Court
(MC)-CO203/2019, CO191/2018,
CO256/2019, CO248/2019 AND
CO445/18)

In the matter between:

DARIO DELCY

(rep. by Nichol Gabriel)

Appellant

and

THE REPUBLIC

(rep. by Mrs. Molle)

Respondent

Neutral Citation: *Delcy v Republic* (CN06/2019, CN07/2019, CN08/2019, CN09/10 AND
CN10/2019) [2020] SCSC 511 (30 July 2020).

Before: Burhan J

Summary: Total sentence of eight years six months reduced to a term of five years six
months on medical grounds.

Heard: [14 May 2020]

Delivered: [30 July 2020]

ORDER

In case MC CO 203 of 2019 (CN 06 of 2019), sentenced to one year imprisonment.

In case MC CO 191 of 2018 (CN 07 of 2019), sentenced to two years imprisonment.

In case MC CO 256 of 2019 (CN 08 of 2018) sentenced to one year imprisonment.

In case MC CO 248 of 2019 (CN 09/2019) sentenced to one year imprisonment.

In case MC CO 445 of 2018 (CN 10 of 2019) sentenced to six months imprisonment.

All sentences to run consecutively. Total sentence to be served is five years six months.
Time spent in remand to count towards sentence.

JUDGMENT

BURHAN J

- [1] The appellant Dario Delcy has been charged in the Magistrates' Court (MC) in five cases. In case MC CO 203 of 2019 (CN 06 of 2019) the appellant was charged as follows.

Count 1

Stealing contrary to and punishable under section 260 of the Penal Code

Particulars of offence are that, Dario Delcy Perseverance, Mahe on the 22nd day of August 2019 at Perseverance Mahe, stole 1 flat screen television Samsung 42 inch color black, 1 black Samsung tablet in a silver and gold pocket, 1 headset color red and white, 2 power bank all the value of Rs.10,750/- being the property of Erica Tonsan.

- [2] The appellant was convicted on his own plea of guilt and sentenced to a term of two years imprisonment.
- [3] In MC CO 191 of 2018 (CN 07 of 2019), the appellant was charged as follows:

Count 1

Housebreaking Contrary to and Punishable under Section 289 (a) the Penal Code

The particular of offence are that, Dario Delcy of Perseverance 1, on the 26th day of February 2018, at Beau Vallon, Mahe, broke and entered into the dwelling house of Annie Moustache with intent of commit a felony therein.

[4] The appellant was convicted on his own plea of guilt and sentenced to a term of three years imprisonment.

[5] In MC CO 256 of 2019 (CN 08 of 2019), the appellant was charged as follows:

Count 1

Criminal Trespass Contrary to and punishable under section 294(1) of the Penal Code read with section 22 and 23 of the Penal Code.

The particular of offence are that, Dario Delcy of perseverance and Kenneth Albert Charles of Perseverance, Mahe, on the 12th day of April 2019 at Roche Caiman, Mahe acted in collaboration by illegally entering onto the property of Mr Percy Amblavaney and Mrs Sally Amblavaney contrary to their will with the intent to commit a felony therein namely, housebreaking.

[6] The appellant was convicted on his own plea of guilt and sentenced to a term of one year imprisonment.

[7] In MC CO 248 of 2019 (CN 09/2019), the appellant was charged as follows:

Count 1

Unlawful Possession of Property Contrary to and Punishable under Section 310 of the Penal Code

Particulars of offence are that, Dario Jason Delcy, residing at Perseverance 2, and Kenneth Albert Charles of Perseverance, on the 19th day of March 2019, at Perseverance, were found in possession of a bag in which there was alcohol, to wit one bottle of Bacardi, one Gin and one bottle of vodka, also one external black make 'Toshiba', was one bottle of Baileys, valued at SR550, one litre bottle of Gordon's and one bottle of Sheridan, these items suspected to have been stolen or unlawfully obtained.

[8] The appellant was convicted on his own plea of guilt and sentenced to a term of two years imprisonment.

[9] In MC CO 445 of 2018 (CN 10 of 2019) the appellant was charged as follows:

Count 1

Escape from lawful custody contrary to section 116 (1) of the Penal Code

Dario Delcy an inmate at Montagne Posee Prison, Mahe, on the 16th February 2017, at IPHS escape whilst in the lawful custody of the superintendent of prison Mr. Vic Trant.

[10] The appellant was convicted on his own plea of guilt and sentenced to a term of six months imprisonment.

[11] It was further ordered by the learned Magistrate that the aforementioned terms of imprisonment imposed in each of the above cases run consecutively. Therefore the appellant would have to serve a total term of 8 years 6 months for all five cases.

[12] As learned Counsel for the appellant based his grounds of appeal in each of the aforementioned cases on the totality of the sentence imposed, this Court proceeded to consolidate the appeals in each case with the consent of parties. The judgment in respect of the consolidated appeals follows.

[13] The main ground urged by learned Counsel for the appellant are that:

- a) The individual sentences imposed and the total sentence imposed by the learned Magistrate are manifestly harsh and excessive:
- b) The sentence imposed in separate cases had been ordered to run consecutively which is contradiction to the sentencing order which states that the sentence should run concurrently.
- c) The learned Magistrate has failed to consider the fact the appellant pleaded guilty in all five cases, committed the offences at the young age of 27, he was working and undergoing methadone treatment whilst in the remand, indicating he was trying to rehabilitate and reform himself.
- d) The Appellant is currently undergoing medical treatment on a daily basis.

- e) The sentence was not in conformity with the principles of sentencing laid down in the cases of **Ponoo v The Attorney General SCA 38/2020, Onezime v R (2014) SCCA 39, and Lenclume v R (2015) SCCA 11.**

[14] I will proceed to consider the grounds raised by learned Counsel for the appellant. It must be borne in mind, the appellant had committed several offences of stealing, house breaking, criminal trespass and escape from lawful custody not within a close proximity of time. Therefore the offences could not be considered to have been committed during the same transaction which would warrant that the sentences be ordered to run concurrently. Therefore Learned Counsel for the appellant's contention that the sentences should run concurrently bears no merit.

[15] Further, it is clear that in the reasoning in the body of the "Sentence" passed by the learned Magistrate dated 10th October 2019, it is specifically mentioned that the sentences should run consecutively totalling a period of 8 years 6 months. However in the "order" space at the beginning of the sentence template to be filled with the summary of the sentence passed by the learned Magistrate, an error has occurred and it has been typed as " *All sentences to run concurrently to one another and a total of 8 years six months to be served.*" It is clear that the word concurrently is erroneous and it should read as consecutive as borne out by the reasoning of the learned Magistrate as set out in the body of the sentence order itself. Further this is supported by the fact that only if it was ordered that the sentences would be consecutive would the appellant have to serve a period of 8 years six months. This period is clearly indicated not only in the "order" part of the sentence template but also in the reasoning part of the sentence. Therefore learned Counsel cannot rely on this error to support his contention that the sentences should have been ordered to run concurrently. I also observe, the learned Magistrate has applied the principles of proportionality as set out in the judgment of *Ponoo supra* and not imposed the minimum mandatory terms of imprisonment as prescribed for the offences of stealing and housebreaking under section 27 of the Penal Code.

[16] Further, in her reasoning as brought to the attention of Court by learned Counsel for the Republic, the learned Magistrate has considered the guilty pleas of the accused, the severity

and disproportionality of the imposition of minimum mandatory terms of imprisonment for such offences. The learned Magistrate has also considered the fact that despite being incarcerated for a period of time, the appellant has made no attempt to reform or rehabilitate himself, but has continued to offend and the need to protect the public from such a person had arisen. It is clear that the appellant needs a longer period of incarceration during which time further attempts by authorities to rehabilitate and reform the appellant could be attempted while at the same time keeping the public safe from such a regular offender.

[17] I see no reason to set aside or vary the sentence on these grounds. However on consideration of ground (d), this court called for a medical report from the Superintendent of Prisons. Having considered the medical in confidence report received, this court is of the view that facts contained in the said report, warrants a reduction of the sentence.

[18] With due consideration to the medical condition of the appellant, the sentences are varied as follows:

In case MC CO 203 of 2019 (CN 06 of 2019), the sentence of two years imprisonment is reduced to one year imprisonment.

In case MC CO 191 of 2018 (CN 07 of 2019), the sentence of three years imprisonment is reduced to two years imprisonment.

In case MC CO 256 of 2019 (CN 08 of 2018) the sentence of one year imprisonment is maintained.

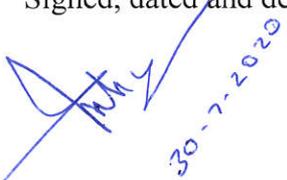
In case MC CO 248 of 2019 (CN 09/2019) the sentence of two years imprisonment is reduced to one year.

In MC CO 445 of 2018 (CN 10 of 2019) the sentence of 6 months imprisonment is maintained.

All sentences to run consecutively. Therefore in total, the appellant is sentenced to a term of 5 years 6 months.

[19] Time spent in remand by the appellant to count towards sentence. The sentence of 8 years 6 months is set aside. The sentence is accordingly reduced as set out in paragraph 18 herein. A warrant of commitment based on the new sentence is to be issued.

Signed, dated and delivered at Ile du Port on 30 July 2020.

Handwritten signature and date in blue ink. The signature is stylized and appears to be 'M Burhan J'. The date '30-7-2020' is written vertically next to it.

M Burhan J