

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 625  
CN04/2019 and CN05/19  
(Appeal from CO248/2019 and  
CO256/19)

In the matter between:

**KENNETH CHARLES**  
(rep. by William Herminie)

**Appellant**

and

**REPULIC**  
(rep. by Luthina Monthly)

**Respondent**

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**Neutral Citation:** *Charles v Republic* (CN04/19 AND CN05/19) [2020] SCSC 625  
(04 September 2020).  
**Before:** Burhan J  
**Summary:** Plea of guilty- maximum sentence must not be imposed.  
**Heard:** 21<sup>st</sup> February and 31<sup>st</sup> July 2020.  
**Delivered:** 04<sup>th</sup> September 2020.

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**ORDER**

**CN 04/2019 sentence of two years reduced to one year.**

**CN 05/2019 sentence of one year affirmed. Sentences to run consecutively.**

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**JUDGMENT**

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**BURHAN J**

[1] In CN 04/2019, Magistrates' Court case CO 248/19, the appellant was charged as follows:

**Count 1**

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

*Particular of offence are that, Dario Jason Delcy, residing at Perseverance 2, and Kenneth Albert Charles of Perseverance, on the 19<sup>th</sup> 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 on external black mahe 'Toshiba', was one 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.*

- [2] On the 10<sup>th</sup> of October 2019, the learned Magistrate sentenced the convict to a term of 2 years imprisonment on this Count and further ordered that the sentence run consecutive to the sentence of one year imprisonment imposed in CO 256/19, resulting in the appellant having to serve a total term of three years imprisonment in respect of cases CO 248/19 and CO 256/19.

- [3] In CN 05/2019, Magistrates' Court case CO 256/19, 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.

*Particulars of offence are that, Dario Delcy of perseverance and Kenneth Charles of Perseverance, Mahe on the 12<sup>th</sup> 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, house breaking.*

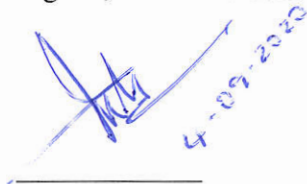
- [4] On the 10<sup>th</sup> October 2019, the learned Magistrate sentenced the appellant to a term of one year imprisonment and ordered the sentence to run consecutively as set out in paragraph 2 herein.
- [5] As the appeal was in respect of the totality of sentences imposed in both appeals CN 04/2019 and CN 05/2019 the appeals were consolidated.

- [6] It appears that the notice of appeal and memorandum of appeal filed by Mr. Gabriel refer to Magistrates' Court cases CO 256/19 and (by error) CO 445/18. The grounds in appeal as set out in the memorandum of appeal are:
- a) *The total sentences imposed by the learned Magistrate are manifestly harsh and excessive and wrong in law and principle.*
  - b) *The individual sentences two years six months and three years should have been made to run concurrently as indicated.*
- [7] Thereafter the appellant moved (refer proceedings of 9<sup>th</sup> March 2020) that his lawyer be changed to Mr. Hermine. Although several dates were given to Mr. Hermine to file submissions, he filed nothing but relied on the notice of appeal and memorandum of appeal filed by Mr. Gabriel.
- [8] I also observe that the initial notice of appeal filed by the prison authorities dated 29<sup>th</sup> October 2019 in both cases, refer to appeals in respect of conviction. But subsequently the notice of appeal and memorandum of appeal dated 21 February 2020, refer to appeal against sentence only in both cases. I will therefore proceed to consider whether the sentences imposed by the learned Magistrate in Magistrates' Court cases CO 248/19 and CO 256/19, totalling a period of three years (two years in CO 248/19 and one year in CO 256/19 to run consecutively) is harsh and excessive.
- [9] I am of the view that the sentence imposed by the learned Magistrate in case CN 05/2019, CO 256/19 is not harsh and excessive and proportionate to the offence committed especially considering the previous record and antecedents of the appellant. I am inclined to agree with learned Counsel for the respondent that the sentence was proportionate to the offence committed and the learned Magistrate cannot be faulted for imposing consecutive sentences, as the offences were not committed in the same transaction. Learned Counsel for the appellant's submission that concurrent sentences were imposed is incorrect.
- [10] I observe that the learned Magistrate had proceeded to sentence the appellant in CN 4/2019 in MC 248/19 to the maximum term of 2 years imprisonment which is the maximum sentence for an offence which is a misdemeanour, despite the convict pleading guilty to

the charge. **Archbold Criminal Pleading, Evidence and Practice 2008 edition paragraph 5-80** states when an accused pleads guilty, he should be entitled to a certain amount of leniency at the time of sentencing on the basis of saving the time of court and public expense of a trial, sparing the time of witnesses attending court and as such plea of guilt is indicative of remorse. In this case however, the learned Magistrate had failed to consider his plea of guilt and show leniency of any kind but proceeded to impose the maximum term of two years imprisonment. I therefore hold that the sentence is harsh and excessive and proceed to set aside the sentence of two years imprisonment and in lieu impose a term of one year imprisonment on the appellant in case CN 04/2019 (CO 248/2019).

- [11] Therefore, the total sentence the convict would serve in both CN 04/19 and CN 05/19 would be two years imprisonment.
- [12] For the aforementioned reasons the appeal in respect of the sentence imposed in CN 05/19 is dismissed, while the appeal in respect of the sentence imposed in CN 04 /19 is upheld and the sentence reduced accordingly.
- [13] Copy of the judgment with an amended warrant of committment to be sent to the Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 04<sup>th</sup> September 2020.



M Burhan J

