

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 773

CN 03/2022

(Appeal from CR 496/2021)

In the matter between:

DILENE BRUTUS

Appellant

and

THE REPUBLIC
(rep. by Ms. Marie)

Respondent

Neutral Citation: *Brutus v Republic* (CN 03/2022) [2022] SCSC 773 (09 September 2022).

Before: Burhan J

Summary: Escape from lawful Custody. Conviction and Sentence of 5 years imprisonment upheld.

Heard: 01 August 2022

Delivered: 09 September 2022

ORDER

Appeal dismissed in its entirety.

JUDGMENT

BURHAN J

[1] The Appellant was charged in the Magistrates' Court as follows:

Statement of Offence

Escape from lawful custody contrary to and punishable under section 116 (2) of the Penal Code Cap 158.

The Particulars of Offence

Delenne Brutus of Belombre Mahe on the 13th of October 2021 whilst under the lawful custody of the police imposed by Court order on the 11 of October, escaped from said custody by running out of and away from the Victoria Hospital casualty unit where he had been brought for medical attention by PC Garry Sophola and SPC Nepali Mangal

- [2] On the 2nd of February 2022, the Appellant in the presence of his lawyer pleaded guilty to the said charge and was convicted on his plea of guilt.
- [3] In terms of section 116 (2) of the Penal Code a person convicted of such an offence is liable to imprisonment for a term of not less than 5 years.
- [4] After hearing the plea in mitigation by his learned Counsel, the learned Magistrate proceeded to sentence the Appellant on the 10th of February 2022, to a term of five years imprisonment.
- [5] The Appellant has appealed against the said conviction and sentence.
- [6] Having filed a notice of appeal on the 24th of February 2022 the Appellant indicated in open Court he did not wish the services of a lawyer. He was given an opportunity to file his Memorandum of Appeal and he proceeded to file a written document dated 18th July 2022 in which he sets out his grounds of appeal in a submission.
- [7] In it the Appellant sets out the details of his arrest and states that his rights were not read out to him at the time of his arrest and he was taken to Courts the next day and remanded for a period of 14 days at the Mount Fleuri Police station. He was informed he had to give his finger and foot prints and he had told them to get a Court order but they had beaten him up and as he had no choice he had given them the prints. He stated he was in pain and he had not received a mattress or anything to sleep on. He had to sleep on the floor in the cold coming from the air conditioner. He had told them the next day he was a “drug abuser” and needed methadone but they had not helped him. He stated he was in pain after the beating and had withdrawal symptoms due to his drug abuse problem. As

no one was doing anything, he had taken a piece of glass put under his neck and told them, if they don't assist him he will kill himself. The police had thereafter taken him to the doctor and he heard the police Officer tell the doctor to be quick as they had things to do. The doctor had checked him up fast and said he was good to go. Thereafter he states, an idea had come to his head that he was going to die in the cell the way they were treating him. He had therefore run out with the intention of going to the Agency for Prevention of Drug Abuse and Rehabilitation (APDAR) to get help, some clothes and food for himself but it was closed and thereafter, he had turned himself in within 24 hours. He states his rights had been abused and still no one cared. He also states that he had pleaded guilty without wasting the time of Court but he complains that he got the maximum sentence. He has moved for forgiveness and admits he was wrong to escape and that he be forgiven.

- [8] Learned Counsel for the Respondent, the Republic, in reply referred to section 309 (1) of the Criminal Procedure Code which reads as follows:

No appeal shall be allowed in the case of an Appellant person who has pleaded guilty and has been convicted on such plea by the Magistrates' Court, except as to the extent or legality of sentence.

- [9] After due consideration of the facts set out by the Appellant and the submissions of learned Counsel for the Respondent, I am of the view that even in his own written submission, the Appellant does not seek to challenge his plea of guilty on the basis it was not an unequivocal plea. Further at the time he pleaded guilty, he was represented by an Attorney-at-Law who was present when the plea was taken and even mitigated on behalf of the Appellant. It is clear from the record of proceedings that the Appellant himself admitted and accepted the facts of the case as set out by the prosecution. There is no material before this Court to set aside the plea of guilty of the Appellant on the basis his plea is not unequivocal. Although he makes many allegations after being sentenced, he has failed to promptly or at the time of mitigation make such allegations known.

[10] Further in regard to his claim that he was beaten up no such allegation has been made in the Magistrates' Court. He admits however that a doctor had seen him at the hospital and said he was okay. In his submission, he states he escaped because an "*idea had come to his head he was going to die in the cell*". I cannot accept this as an excuse for his conduct in escaping from lawful custody, when he himself admits in his submissions, he had just been seen by a doctor who said he was okay.

[11] In the case of ***Paul Oreddy v Rep SCA 9 of 2007***, the conviction was set aside as the plea of guilt was based on a misapprehension of the law and facts by the accused and thus did not amount to an unequivocal plea of guilt by the accused. In the case of ***Raymond Tarneki v Rep SCA 4 of 1996***, the Court of Appeal set aside the conviction on the grounds that the plea was influenced by a "grossly erroneous view of the law given by counsel to a foreigner on vacation in Seychelles." The facts before this Court in this instant case, do not show that the plea of guilt by the Appellant was based on any misapprehension of the law and facts or that he was influenced in anyway to have a grossly erroneous view of the law. For the aforementioned reasons and on perusal of the proceedings of 2nd February 2022, I am satisfied that the Appellant's plea on the said date was an unequivocal plea of guilt, in the presence and on the advice of his learned Counsel.

[12] I therefore proceed to dismiss the appeal against conviction.

[13] In regard to the sentence imposed, the Appellant states that he had turned himself in within 24 hours. This in my view would have been a strong mitigating factor not to impose the minimum term of five years set down by law. However on perusal of the proceedings dated 2nd of February 2022, it is clear the facts accepted by him after his plea and before his conviction, indicate he was re-apprehended on the 14th of October 2021. His own lawyer in mitigation states "*He was arrested by the police 8 hours after his escape.*" Therefore his subsequent statement to Court that he turned himself in to the police cannot be accepted.

[14] I observe as brought to the attention of this Court by learned Counsel for the Respondent that the learned Magistrate Mr Asba had distinguished instances where he had given less

than the minimum term of imprisonment for such an offence as in the case of first offender. However where an habitual offender had benefitted from lenient sentencing on earlier occasions but still not benefitted by showing willingness to reform, he had imposed the minimum mandatory term of imprisonment. I also observe that the learned Magistrate has also guided himself on the principles of sentencing being retribution, deterrence, prevention and rehabilitation and decided on an appropriate sentence to be imposed.

[15] It is clear from the previous conviction report filed by the prosecution and admitted by the Appellant that the Appellant has a long history of previous convictions. The Appellant is a habitual offender who has two previous convictions of the same offence of Escaping from lawful custody. I am satisfied on perusing his list of previous convictions and the lenient sentences imposed on him by Courts that ample opportunity has been provided to the Appellant for him to reform or rehabilitate himself. However he continues to offend.

[16] It is my view too that the stage has been reached where suitable deterrent punishment must be given to such an offender not only to act as a deterrent to the Appellant who has been treated leniently on two previous occasions in respect of the same offence but to act as a deterrent to other likely offenders as well. Further considering the circumstances of this case, this Court will not proceed to interfere with the sentence imposed, as it cannot be said that the sentence imposed by the learned Magistrate is harsh and excessive, wrong in principle or far outside the discretionary limits. It also cannot be said that the learned Magistrate has failed to take into consideration relevant and material circumstances in sentencing the Appellant nor could it be said that the learned Magistrate has improperly taken into consideration any matter as held in ***Mathiot v R* (SCA 9 of 1993) [1994] SCCA 30 (25 March 1994)**, which guidelines were also followed by the Seychelles Court of Appeal in ***Crispin v R* (SCA 16 of 2013) [2015] SCCA 29 (28 August 2015)**, ***Cousin v R* (SCA 21 of 2013) [2016] SCCA 2 (22 April 2016)**.

[17] For the aforementioned reasons, the learned Magistrate cannot be faulted in respect of his findings set out in his sentence. I therefore will not proceed to interfere with the sentence

of the learned Magistrate. The sentence of 5 years imprisonment imposed by the learned Magistrate is upheld. The appeal is dismissed in its entirety.

[18] I make further order that during his period of incarceration, the Appellant undergoes rehabilitation in respect of his drug addiction.

Signed, dated and delivered at Ile du Port on 09 September 2022

Burhan J