

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC 159  
CO38/2022

In the matter between:

**THE REPUBLIC**  
(represented by Ms. Ketlynn Marie )

**Prosecution**

and

**TERRY LUCAS**  
(represented by Mr. Anthony Juliette)

**Accused**

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**Neutral Citation:** *The Republic v Lucas* (CO38/2022) [2022] SCSC 159 (03 March 2023)

**Before:** Adeline J

**Summary:** Sentencing of a convicted person.

**Heard:**

**Delivered:** 3<sup>rd</sup> March 2023

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**FINAL ORDER**

The accused, having been convicted of one count of assault with intent to steal contrary to and punishable under Section 283 of the Penal Code, is sentenced to serve a term of imprisonment of two years.

Time spent on remand in Police custody shall be deducted from the 2 years prison sentence

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**SENTENCE**

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**Adeline, j**

[1] By way of a formal charge sheet filed in Court on the 5<sup>th</sup> September 2022, the accused, one Terry Lucas of Anse Louis, Mahé, Seychelles, now a convict, was initially charged with one count of Robbery with violence contrary to Section 280 of the Penal Code (Cap 158) read with Section 281 and punishable under Section 281 of the Penal Code.

- [2] As per the particulars of the defence pertaining to CB176/08/22 of Anse Boileau Police Station as featured in the charge sheet, he, “Terry Lucas, on the 19<sup>th</sup> August 2022, in the district of Anse Boileau, robbed one StopBuy Shop of an unknown amount of money unknown to the Republic and at, or immediately after the time of such robbery did use personal violence by placing a knife under the neck of one Dale Morel, a worker at the StopBuy Shop .
- [3] In substitution to the initial charge, the prosecution filed an amended charge dated the 31<sup>st</sup> October 2022. As per the amended charge, Terry Lucas of Anse Louis, Mahé, Seychelles was charged with one count of Robbery with violence contrary to Section 280 of the Penal Code (Cap 158) read with Section 281 and punishable under Section 281 of the Penal Code.
- [4] The particulars of the offence, reads;
- “Terry Lucas, on the 19<sup>th</sup> August 2022, in the District of Anse Boileau stole from one StopBuy Shop an amount of money unknown to the Republic and at, or immediately after the time of such stealing did use personal violence to one Dale Morel, a worker at StopBuy Shop and threatened him by placing a knife under the neck of the said Dale Morel.
- [5] In the alternative to count 1, that is count 2, the accused now a convict, was charged with assault with intent to steal contrary to and punishable under Section 283 of the Penal Code.
- [6] The particulars of the offence reads;
- “Terry Lucas, on the 19<sup>th</sup> August 2022, in the district of Anse Boileau, assaulted one Dale Morel, a worker of StopBuy Shop by placing a knife under his neck with intent to steal from the said shop an amount of money unknown to the Republic.”
- [7] On the 18<sup>th</sup> November 2022, the accused, now a convict, pleaded not guilty to one count of Robbery with violence which was subsequently withdrawn, and guilty to one count of Assault with intent to steal. After he admitted the facts pertaining to count No2, the

offence of assault with intent to steal as narrated by the prosecution, the accused was convicted on his guilty plea.

[8] Learned Counsel for the accused/convict, sought for a pre-sentence probation enquiry report (“the report”), which upon its call, the same dated 2<sup>nd</sup> February 2023 was received by this Court. In the report, the author of the same, the Principal Probation Officer, reports that the accused/convict who is in good health, is a 35 year old who is the son of one Beryl Zelia and Philippe Lucas who separated 4 years ago. He has two siblings. He lives at Anse Louis and is presently in a common law relationship with a 23 year old by the name of Cynthia Volcere, and of their relationship they have a 7 year old son by the name of Jahim Lucas.

[9] Educational wise, the accused/convict is a secondary school leaver who then joined the Industrial Training Centre (ITC) and followed a certificate course in electrical installation. His first employment was at MIA Resort as a recreational facilitator, then a cook helper at Barbaron Hotel and a cook at the then Plantation Club. For the past 15 years, the accused/convict has been self employed as a rock driller.

[10] The accused/convict’s explanation for having committed the offence for which he has been convicted, is that he was heavily dependent on drugs, cocaine at the time. On the day he committed the offence, he had gone to a friend’s place to collect some money which that friend owed him. The friend was absent from home and he badly needed money to buy drugs to meet his drugs addiction. Returning back home, and craving for drugs, he passed by the shop, walked inside and became involved in the unlawful conduct for which he is charged. Because he carried with him a knife, he took the same from his pocket and placed it under the neck of the victim of the offence to intimidate him for him to accede to his demand for money. The accused/convict told the Probation Officer that he took the sum of SCR 15, 000 from the shop.

[11] As regards to what he feels about what he did, the accused/convict stated that, he is very remorseful for what he did, and that it was never his intention to harm his victim or anybody else. He simply wanted to intimidate them to be able to carry out his unlawful act. According to him, he has never been involved in such unlawful conduct in the past

as he has always find his money to buy drugs from legitimate sources, and that he could not explain what went into his mind. A view expressed by his partner, Cynthia Volcere who told the author of the report, that her 9 years old son has been deeply affected by this incident, and is attending to counselling session as a result.

[12] Besides being remorseful for what he did, the accused/ convict stated that, he feels bad and ashamed and that his close family members and friends, as well as the community inhabitants were shocked for what he did. According to the convict, some of them have even told him that they are disappointed by his conduct. The accused/convict acknowledges that he has committed a serious crime, but prays for forgiveness. The report reveals that the accused/convict is mindful that “he will not go unpunished for the offence committed”.

[13] Nonetheless, he indicated to the author of the report that the Court needs to take into account that “he is a first time offender, has pleaded guilty at first instance, has not wasted the Court’s time and resources, and that he has shown remorse for his unlawful act. The accused/convict, would like the Court to impose on alternative punishment to imprisonment suggesting, for example, awarding compensation to his victim. He is of the view, that since it has been very hard for him to cope whilst on remand in Police custody, imprisonment would even be harder for him to cope with.

[14] It is featured in the Probation Services Enquiry Report, that from the perspective of the accused/convict, the only positive benefit he has gained whilst on remand, is that “remand has enabled him to seriously address his drugs dependency, whereby he has been more serious with his methadone treatment, and that he is now drug free, a status which has been confirmed by a drug test carried out on the 2<sup>nd</sup> February 2023.

[15] It is also reported in the Probation Services Enquiry Report, that the 23 year old victim of the crime, Dale Morel, doesn’t want to forgive the accused for his crime. He told the author of the report that the accused should be severely punished for his crime, stating that, such serious offence should not be tolerated and go unpunished. He is of the view, that the Court should impose a custodial sentence and a compensation order as punishment.

[16] In the report at paragraph 6 under the heading “Assessment”, the author has this to say;

*“the offence that the accused has been charged with is of a serious nature and calls for stiff measures of deterrent. Moreover, the accused should come to realise that when one gets involved in such crime it is inevitable that one will not go unpunished as society totally condemned those behaviours”.*

[17] At paragraph 7, the author goes on as to say that;

*“To conclude, it is of the opinion that a form of punishment be imposed on the accused that will serve as a future deterrent as well as send a strong message to other would be perpetrators to refrain from engaging in similar behaviour”.*

[18] Learned Counsel for the accused//convict opted not to add anything more by way of plea mitigation, urging the Court to adopt the antecedents of the accused/convict contained in the Probation Services Enquiry Report. Learned Counsel also urged the Court to impose a sentence that would reflect the recommendation of the Probation Officer, in that, the report “recommends that a suspended sentence be imposed on the accused, coupled with a compensation order”.

[19] In sentencing this accused/convict, I have given the utmost consideration to a possible suspended sentence as recommended by the Principal Probation Officer, which recommendation has been fully endorsed and adopted by learned Counsel for the accused/convict. However, I am not at all persuaded, that a suspended sentence will do justice in this case, let alone, achieve the purpose and principles of sentencing. It is a trite principle in criminal law, that sentencing is a matter for the trial or presiding Judge vested with a discretionary power that is exercised by balancing the mitigating factors against the aggravating factors to reach the right sentence that will do justice to the case.

[20] The offence of which the accused/convict has been convicted under Section 283 reads as follows;

*“Any person who assaults any person with intent to steal anything is guilty of a felony and is liable to imprisonment for ten years”*

The prescribed sentence indicates that, the offence of which the accused/convict has been convicted is a felony, thus very serious. It is from that premise, that I will endeavour to mete out the right and just desert sentence that will do justice to the case.

[21] Therefore, given the seriousness of the offence viewed on account of its prescribed punishment, I have given particular consideration to the punitive objective of sentencing, which the Court in *Lawrence & Another vs The Republic* [1990] SLR has fully endorsed, which are deterrence, retribution denunciation and rehabilitation.

[22] In sum, deterrence in the sense that the sentence so imposed is aimed to dissuade the offender from reoffending as well as others who have been made aware of the punishment inflicted upon the offender from offending. Retribution in the sense that the guilty ought to suffer the punishment which he deserves. Denunciation in the sense that this is achieved by the imposition of a sentence the severity of which makes a statement that the offence in question is not to be tolerated by society in general or in specific instance, and rehabilitation in the sense that rehabilitative approaches to punishment emphasise that changes that can and should be brought about in the offender’s behaviour and in the interest of society and the offender himself.

[23] In the case of *H. Savy and Ors vs Republic* SLR 1976, the Court cited the English case of *Kenneth ball*, 35 Criminal Appeal R 164, quoting the judgment of Hilbery j who had stated the following therein;

“In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime but also, in the hope of preventing it. A proper sentence passed in public serves the public in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice the punishment will be negligible. Such a sentence, may also deter the particular criminal from committing a crime again or induce him to turn from a criminal to an honest life. The public interest is indeed best

served, if the offender is induced to turn from criminal ways to honest living. Not only in regard to each criminal, the Court has the right and duty to decide whether to be lenient or severe”.

[24] In meting out the right sentence that will do justice in this case, I have had regards to the mitigating factors which the accused/convict has raised and are featured in the Probation Services Enquiry Report adopted by Counsel as plea mitigation. I note, that those factors are, that the accused/convict has shown genuine remorse for the crime he committed, that he has pleaded guilty at the first available opportunity, that he has no prior criminal record, that he is a young family man who has a child, that the offence was an isolated incident that will not happen again, and that he is unlikely to reoffend because he is no longer dependant on drugs. I am not however impressed about the accused/convict’s explanation for having committed the offence. The fact that he was dependant on drugs cannot be given much weight, because that cannot exonerate him from criminal liability.

[25] The aggravating factors that transpired from the facts and circumstances of the offence, is that a weapon was used to frighten the victim of the crime, there were some degree of planning, the offence was motivated and committed for financial gain, a high level of profit was made from the offence, and the accused’s victim played a significant role in the commission of crime.

[26] It is worth mentioning, that the Court received no guidance from either parties as regards to sentencing precedents for offences of this nature based on similar or almost similar facts. The case of *Flore VR* (SCA CR12 of 2020) [2021] (SCA CR12 of 2020) [2021] SCCA 74 (17<sup>th</sup> December 2021), makes good reading for the purposes of a broader view of how the Court should approach sentencing in cases of this nature with identical facts and circumstances, or almost identical facts and circumstances, although, admittedly, in the instant case, the accused/convict was convicted on his guilty plea, and sentenced for a less serious offence.

[27] Interestingly, in the last paragraph of the judgment of the Court of Appeal in the case of Flore (supra), Fernando, PCA', had this to say;

“This was essentially a case where deterrence, denunciation, rehabilitation and community protection had to be considered”

[28] In the final analysis, therefore, and for the reasons discussed in the preceding paragraphs of this sentence order, and in balancing the mitigating factors against the aggravating factors in this case in the light of the purposes and principles of sentencing, I hold the view, that this is a case where the perpetrator of the crime deserves a custodial sentence as the “just dessert” sentence. In the circumstances, I sentence the convict, Terry Lucas of Anse Louis, Mahé, Seychelles to a term of imprisonment of two years as of the date of this sentence order. In accordance with Article 18 (14) of the constitution, time which the convict has spent on remand shall be deducted from this two years prison sentence.

Signed, dated and delivered at Ile du Port on 03<sup>rd</sup> March 2023

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Adeline J