

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC  
CO 11/2022

In the matter between:

**THE REPUBLIC** **Prosecution**  
(Represented by Mrs Nissa Thompson and Mr Brandon Francois)

And

**JOHANESS LAFORTUNE** **1<sup>st</sup> Accused**  
(Represented by Mr Daniel Cesar)

**RICKY SHANE NIOZE** **2<sup>nd</sup> Accused**  
(Represented by Ms Manuella Parmantier)

**NICOLE STEVEN NIOZE** **3<sup>rd</sup> Accused**  
(Represented by Ms Barbe)

**NADIA MIRIAM CONFIANCE** **4<sup>th</sup> Accused**  
(Represented by Ms Karen Domingue)

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**Neutral Citation:** *Rep vs Lafortune & Ors* (CO 11/2022) [2023] SCSC (19<sup>th</sup> May 2023)

**Before:** Adeline J

**Summary:** Sentencing of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused on guilty plea/4<sup>th</sup> accused maintains her not guilty plea.

**Heard:** 10<sup>th</sup> March 2023

**Delivered:** 19<sup>th</sup> May 2023

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**SENTENCE**

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**Adeline, J**

[1] By way of an amended charge pertaining to CB 84/02/22 of Perseverance PS, filed in court on the 9<sup>th</sup> February, 2023 Johanness Lafortune of Petite Paris (“the 1<sup>st</sup> Accused”), was charged before this court with one count of Unlawful Use of Vehicle contrary to

Section 279 of the Penal Code and Punishable under Section 279 of the Penal Code (Count 4). The 1<sup>st</sup> accused was also charged with one count of Neglect to Prevent a Felony namely, Stealing contrary to Section 380 of the Penal Code and punishable under Section 380 of the Penal Code (Count 5). On the 9<sup>th</sup> of February 2023, the 1<sup>st</sup> accused pleaded guilty to both charges, (count 4 and count 5), and was accordingly convicted for both counts after he admitted the facts pertaining to the charges as narrated by the prosecution.

[2] Also charged before this court was Ricky, Shane, Nioze also of Petit Paris, Mahe (“the 2<sup>nd</sup> accused”). He was charged with one count of Conspiracy to Commit a Felony namely Stealing contrary to Section 381 of the Penal Code read with Section 253, and Section 23 of the Penal Code and punishable under Section 381 of the Penal Code (Count 1). On the same day, the 9<sup>th</sup> of February 2023, the 2<sup>nd</sup> accused pleaded guilty to the charge and was accordingly convicted after he admitted the facts pertaining to the charge as narrated by the prosecution.

[3] Also charged before this court was Nicole, Steven Nioze of Mont Fleuri, Mahe (“the 3<sup>rd</sup> Accused”). He was charged with one count of Damaging Property contrary to Section 325 (1) of the Penal Code and punishable under Section 325 (1) of the Penal Code (Count 3). On the same day, the 9<sup>th</sup> February 2023, the 3<sup>rd</sup> accused pleaded guilty to the charge and was accordingly convicted after he admitted the facts pertaining to the charge as narrated by the prosecution.

[4] Nadia, Miriam, Confiance (“the 4<sup>th</sup> Accused”), charged with one count of Conspiracy to Commit a Felony namely Stealing contrary to Section 381 of the Penal Code read with Section 253 and Section 23 of the Penal Code, and punishable under Section 381 of the Penal Code (Count 1), and one count of Counselling or Procuring Another Person to Commit a Felony, namely Stealing contrary to Section 22 (d) as read with Section 253 and punishable under Section 260 of the Penal Code (count 2) pleaded not guilty to both counts and is awaiting trial.

- [5] Today, the case is for sentencing of Johanness Lafortune, (the 1<sup>st</sup> convict) Ricky, Shane Nioze (the 2<sup>nd</sup> convict) and Nicole, Steven Nioze (the 3<sup>rd</sup> convict).
- [6] The particulars pertaining to the offence of unlawful use of vehicle which the 1<sup>st</sup> convict Johanness Lafortune admitted, is that, on the 14<sup>th</sup> day of February 2022 he unlawfully and without colour of right, but not so as to be guilty of stealing, took his own use or to the use of other persons known to the Republic a Police vehicle bearing registration Number GS 36149 to commit a felony namely stealing. The particulars pertaining to the offence of Neglect to prevent a Felony namely Stealing, which the 1<sup>st</sup> convict also admitted, is that, on the 14<sup>th</sup> day of February 2022, knowing that a person known to the Republic Ricky, Nioze and Nicole, Nioze designs to commit, or is committing a felony, namely stealing, failed to use all reasonable means to prevent the commission or completion thereof.
- [7] The particulars of the offence pertaining to the offence of Conspiracy to Commit a Felony namely Stealing which the 2<sup>nd</sup> convict, Ricky Shane Nioze admitted, is that on or around the 14<sup>th</sup> February 2022, he agreed with one another to fraudulently and without claim to take a sum of cash amounting to SCR 20,000/- being the property of La Belle Car Hire owned and represented by Viraf Udwardia from motor vehicle make Kia Rio colour white bearing registration number S2826, belonging to Richael Molle of Beau Vallon which was parked outside flat S4-65 at Perseverance 2.
- [8] The particulars of the offence pertaining to the offence of Damaging Property which the 3<sup>rd</sup> convict, Nichol Steve Nioze admitted, is that, on the 14<sup>th</sup> February 2022, he wilfully and unlawfully damaged motor vehicle make Kia Rio colour white bearing registration number S2826 belonging to Richael Molle of Beau Vallon which was parked outside flat S4-65 at Perseverance 2, by way of forcing open and denting the driver's door, and inside the car atmospheric shelf scratched and dented, glove box handle broken to the value of SCR 7989.91.

- [9] On the requests of all the three convicts, through learned counsels, a Probation Services Enquiry Report in respect of each of them was sought for which reports dated the 8<sup>th</sup> March 2023 were called for and received by the court as well as learned counsel representing them.
- [10] In his plea in mitigation on behalf of the 1<sup>st</sup> convict, learned counsel, Mr Daniel Cesar, submitted, that his client is a first time offender who pleaded guilty and that in doing so, he has not wasted the court's time. Learned counsel also submitted, that his client has agreed to give evidence for the prosecution in this case against the 4<sup>th</sup> accused person. Learned counsel further submitted, that given that the offences for which his client has been convicted are misdemeanors, the court has to exercise leniency in sentencing his client.
- [11] In her plea in mitigation, learned defence counsel Ms Parmantier, making references to the Probation Enquiry Report, submitted, that the 2<sup>nd</sup> Convict Ricky, Shane, Nioze is the father of a 3 year old son who depends on him financially, and that his partner, is expecting a child in August this year. He is in employment as a sky lift operator at Exxtra Maintenance and at Mountain High Construction, albeit on a part time basis.
- [12] It was the submission of the learned counsel, that by pleading guilty, the 2<sup>nd</sup> accused has saved the court's time and resources, and that he has shown remorse for the offence he has committed, something which is also featured quite eloquently in the Probation Enquiry Report. Learned counsel further submitted, that the 2<sup>nd</sup> accused is a first time offender who did cooperate fully with the police throughout the investigation. It is further submitted by learned counsel, that the 2<sup>nd</sup> accused acknowledges, that he has let himself as well as his family down by his involvement in the incident that led to his arrest and charge for the offence he has since been convicted. It is the submission of learned counsel, that the 2<sup>nd</sup> convict has not benefited from the commission of the offence.
- [13] In the Probation Enquiry Report, the 2<sup>nd</sup> convict gave a detailed account of how he was persuaded to take part in the incident that led to his arrest, prosecution and conviction,

stating, that he regrets his decision. The 2<sup>nd</sup> convict explained, that although he was told that he would be compensated for his participation into the commission of the offence, he was not in need of financial assistance. The 2<sup>nd</sup> convict told the author of the report that although he realises that he cannot go unpunished, he would like the court to consider his plea for mercy and to impose on him a non-custodial sentence.

[14] In her plea in mitigation, learned counsel for the 3<sup>rd</sup> convict, Nicole Steve, Nioze submitted, that her client has pleaded guilty to one count of Damaging Property without wasting the court's time and resources that would have otherwise happened if the case was to proceed through a trial. Learned counsel submitted, that, given his client's guilty plea, his client expects a reduced sentence by one third. Learned counsel refers this court to Black Stone Criminal Procedure 2012 to support the proposition "that a guilty plea would earn an accused a reduction in sentence and save time of the court and reduce considerable cost". Learned counsel referred the court to the Probation Enquiry Report, noting the fact, that the 3<sup>rd</sup> convict had told the probation officer, that he felt compelled to commit the offence at the request of the 1<sup>st</sup> convict because he owed him money and was being threatened by him.

[15] Learned counsel told the court, that the 3<sup>rd</sup> convict is a first time offender who feels very remorseful for what he did, and is ready and willing to pay the victim compensation for the crime committed should the court orders him to do so. Learned counsel submitted, that the offence of which the 3<sup>rd</sup> convict has been convicted is a misdemeanor and that under Section 25 of the Penal Code, the court is empowered to impose different punishment rather than custodial sentences only. Learned counsel also submitted, that should the court contemplate a custodial sentence, then the sentence should be suspended as recommended by the Probation Enquiry Report.

[16] In the Probation Enquiry Report, it is reported, that the 3<sup>rd</sup> convict told Probation officers that he was motivated to commit the offence because he was indebted with the 1<sup>st</sup> and 2<sup>nd</sup> convicts, and that he was being threatened by the 1<sup>st</sup> convict who was a police officer. The 3<sup>rd</sup> convict did express remorse for the offence he committed to the Probation

Officer, stating, that he would prefer to pay the victim of his crime compensation rather than to be incarcerated.

[17] In respect of the 1<sup>st</sup> convict Johanness Lafortune, the offence of Unlawful Use of Vehicle Contrary to Section 279 of the Penal Code and punishable under Section 279 of the Penal Code of which the 1<sup>st</sup> convict Johanness Lafortune has been convicted is a misdemeanor that carried a term of imprisonment of six months, or a fine of SR 500 or both such imprisonment and fine. The offence of Neglect to Prevent a Felony namely Stealing contrary to Section 380 of the Penal Code and punishable under Section 380 of the Penal Code of which the 1<sup>st</sup> accused has also been convicted is also a misdemeanour.

[18] In meting out the right sentence that will do justice to this case, I have considered the relevant matters raised and discussed in the Probation Enquiry Report as well as the matters raised by the learned counsel in plea mitigation in respect of the personal and family circumstances of the convict as well as the circumstances the offences were committed.

[19] I note from the Probation Enquiry Report, that the 1<sup>st</sup> convict was a member of the Seychelles Police Force when he committed these offences, and that as a member of a disciplinary force entrusted with the task of enforcing law, this means that the two offences he committed have an aggravated nature.

[20] However, being constrained by the law, I therefore impose a term of imprisonment of 5 months on the 1<sup>st</sup> convict, and a fine of SR 500 which shall be paid by the 30<sup>th</sup> of this month, May 2023, failing which the convict will have to serve a default sentence of a term of 1-month imprisonment for the offence of unlawful use of vehicle.

[21] In accordance with Section 282 (1) of the Criminal Procedure Code, the 5 months' prison sentence shall be suspended for two years on condition that the convict does not commit similar offence during the 2 years.

- [22] As to the offence of Neglect to Prevent a Felony, I fine the convict the sum of SR 3,000 which must be fully paid by latest 30<sup>th</sup> August 2023 in default of which he will serve a term of imprisonment of 4 months.
- [23] The offence of conspiracy to commit a felony of which the 2<sup>nd</sup> convict Ricky, Shane, Nioze has been convicted is a felony that carries a maximum prison sentence of 7 years. In determining the right sentence that will do justice to this, I have considered the relevant matters raised and discussed in the Probation Services Enquiry Report as well as the submission of learned counsel in plea mitigation. I have in particular, taken into account the personal and family circumstances of the 2<sup>nd</sup> convict as well as the fact that he is a first time offender who has been cooperating with the police and showed remorse for the crime he committed. I therefore sentence the 2<sup>nd</sup> convict Ricky, Shane, Nioze to a term of imprisonment of one year plus a fine of SCR 6,000 which must be fully paid by the latest 30<sup>th</sup> November 2023, in default of which the 2<sup>nd</sup> convict shall serve a term of imprisonment of 6 months.
- [24] In accordance with Section 282 (1) of the Criminal Procedure Code, the 1 year prison sentence shall be suspended for 2 years on condition that he doesn't commit any similar offence or any offence under Chapter XL of the Penal Code.
- [25] The offence of damaging property of which the 3<sup>rd</sup> convict Nicole, Steven Nioze has been convicted, is a misdemeanor that carries a maximum term of imprisonment of two years. In meting out the right sentence that will do justice in this case, I have taken into account the personal and family circumstances of the 3<sup>rd</sup> convict as well as the circumstances the offence was committed, and the matters raised and discussed in the Probation Enquiry Report as well as the matters raised by defence counsel in plea mitigation. I take note that the 3<sup>rd</sup> convict has pleaded guilty thus saving the court's time and resources, and the fact that this entitles him to a reduced sentence. I also take note that the 3<sup>rd</sup> convict is also remorseful for the offence he committed and that he has expressed his desire to compensate the victim of his crime.

[26] I therefore sentence the 3<sup>rd</sup> convict Nicole, Steven, Nioze to serve a term of imprisonment of 1 year and to pay a fine of SCR 5,000 to be paid by latest 30<sup>th</sup> October 2023, in default of which the convict shall serve a default prison sentence of 6 months. In accordance with Section 282 of the Criminal Procedure Code, the 1 year prison sentence shall be suspended for two years on condition that during the two years the convict does not commit a similar offence.

[27] The convicts may, as of right, appeal against the sentences imposed within 30 days as of today.

Signed, dated and delivered at Ile du Port 19 May 2023.

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B Adeline, J