

SUPREME COURT OF SEYCHELLES

Reportable
CN 04/2023

In the matter between:

YANNICK CONSTANT
(Present/Self-represented)

Appellant

and

THE REPUBLIC OF SEYCHELLES
(Represented by Mr Brandon Francois)

Respondent

Neutral Citation: *Constant vs The Republic* (CN 04/2023) (3 June 2024).

Before: Adeline J

Summary: Appeal against sentence on conviction for the offence of stealing from vehicle.

Heard: 13 March 2024

Delivered: 3 June 2024

FINAL ORDER

The appeal against the sentence is dismissed, and the sentence of the learned Magistrate affirmed.

RULING

Adeline J,

[1] The Appellant in this appeal, one Yannick Constant who is now a convict, has lodged this appeal against the sentence of the learned Magistrate dated 10th March 2023, following his conviction for the offence of Stealing from Vehicle contrary to and punishable under Section 264 (c) of the Penal Code, filed in court on the 18th August 2022 that reads as follows;

Count 1

Statement of Offence

“Stealing from vehicle contrary to and punishable under Section 264 (c) of the Penal Code, Cap 158”.

[2] The particulars of the offence reads;

“Yannick Constant of La Gogue, Mahe, on the 16th August 2022, at the Freedom Square car park in Victoria, Mahe, stole from the car with vehicle Registration number S22709, one box of cigar having a value of SCR 1000, an iPhone charger having a value of SCR 800 and one spray having a value of SCR 200 all being the property of one Andrew Athanase of Mont Buxton”.

[3] On his guilty plea to the charge, the learned Magistrate convicted the Appellant for one count of Stealing from Vehicle contrary to and punishable under Section 264 (c) of the Penal Code, and on the 10th March 2023, the Appellant was sentenced to serve a term of imprisonment of 5 years for Stealing from Vehicle with time spent on remand whilst awaiting trial up to the date of the sentence to be deducted from the 5 years prison sentence.

[4] The Appellant has now filed before this court a Notice of Appeal to appeal to this court against the sentence imposed. The Notice of Appeal contains a single ground of appeal that reads as follows;

“This appeal is against sentence only on the ground that it is too harsh”.

[5] The offence of which the Appellant has been convicted and sentenced as amended by Act 5 of 2012 of the Penal Code, is a felony that is punishable to a maximum term of imprisonment of 12 years and to a minimum term of imprisonment of 5 years for a second offence.

- [6] The imposition of the 5 years prison sentence by the learned Magistrate was after consideration of the Probation Report and the matters raised by learned defence counsel in plea in mitigation who had prayed for a suspended sentence.
- [7] Reading from the sentence dated 10th March 2023, the mitigating factors which the learned Magistrate took into account before imposing the 5 year prison sentence included, inter alia, the fact that the Appellant/convict pleaded guilty at the first available opportunity, the Appellant/Convict had shown remorse for the offence committed, and the value of the stolen items which it was of the view was not on the high side and had been recovered.
- [8] The aggravating factors which the learned Magistrate took into account, included, the fact that the Appellant/convict was a grown up adult of 35 years old at the time sentence was imposed on him and that he is a recidivist on account of his past criminal convictions. The learned Magistrate noted, that the Appellant/convict committed the offence of which he has been convicted just five months after he was released from prison. The Appellant most recent past criminal convictions include, one count of Stealing from Vehicle on the 8 August 2018 in CN 198/2018, one count of Stealing in CN 307/2019 on the 8th March last year, and one count of Unlawful Use of Vehicle in CN 05/2022.
- [9] The learned Magistrate noted, that the prescribed sentence for the offence of stealing from vehicle being a maximum of 12 years and a minimum of 5 years for a second time offender “speaks volume” of the seriousness of the offence of which the Appellant has been convicted. The learned Magistrate also discusses the rationale of sentencing with specific emphasis on “deterrence” citing the case of *Savy vs R [1976] SLR*.
- [10] In its opposition and objection to the appeal against sentence, learned state counsel for the Republic submits, that the Appellant/convict has not pleaded its ground of appeal properly and correctly in a Memorandum of Appeal, and that the only one ground mentioned in its Notice of Appeal seems to be “the sentence is too harsh”. Learned counsel adds, that base on the Appellant’s pleadings, it is not shown where the trial Magistrate erred when considering the mitigating and aggravating factors to come to the sentence imposed on the Appellant/Convict.

[11] Citing the case of *Godfrey Mathiot vs The Republic SCA 09/1993*, learned counsel also submits, that the learned Magistrate’s approach in individualising the sentence so imposed was a correct one, and that in the process, it did correctly apply the principles of sentencing with particular emphasis on deterrence.

[12] As regards to the penalty for the offence as prescribed by law, learned counsel submits, that the learned Magistrate got the law right both in terms of the maximum and the minimum sentence for a second time repeated offender which is 5 years imprisonment.

[13] It was the submission of learned counsel, that the learned Magistrate correctly considered the facts that were mitigating and aggravating factors and that in respect of the latter, the learned Magistrate did take into account the fact that the Appellant/convict has a previous conviction for a similar offence committed in August 2018, and other convictions for other offences such as, for example, the offence of Stealing and the offence of Unlawful Use of Vehicle all of which the Appellant/Convict was given custodial sentences.

[14] Amongst other things, learned counsel has this to say;

“The Respondent respectfully submits, that the Appellant has displayed a clear propensity to re-offend with offences of similar nature, and that the courts have been lenient with him on at least three previous occasion, and such sentence has not yielded positive rehabilitation and has not deferred the Appellant away from criminality”.

[15] In the final analysis, it clearly exists several of the aforementioned aggravating factors and circumstances, the most notable one being that the Appellant/convict is a repeated offender of similar offence. He seems to have the propensity to commit this type of crime. I therefore find it very difficult to be persuaded, that the sentence of 5 years imposed on the Appellant/Convict for stealing from vehicle by the learned Magistrate is harsh. I am reminded that sentencing in a matter for the presiding Magistrate only in exercise of its discretion.

[16] In the case of *Mathiot v Republic SCA 09/1993, LC 29*, the court spelt out the following principles;

1. An appellate court will not interfere with the discretion of a court of first instance merely on the ground that the appellate court would have reached a different decision.
2. In sentencing, courts should consider the principles of retribution, deterrence, prevention and rehabilitation.
3. In sentencing appeals, the court will typically intervene only where;
 - (a) The sentence was harsh, oppressive or manifestly excessive.
 - (b) The sentence was wrong in principle
 - (c) The sentence was far outside the discretionary limits.
 - (d) A matter had been improperly taken into consideration, or a matter that should have been taken into consideration was not, or
 - (e) The sentence was not justified in law.

[17] There is no evidence of any violation of any of those principles by the learned Magistrates. Therefore, I find no good reason to interfere with the sentence imposed on the Appellant/convict by the learned Magistrates. For the reasons expounded in the preceding paragraphs of this ruling, I dismiss the appeal and affirm the sentence of 5 years imprisonment imposed on the convict by the learned Magistrate.

Signed, dated and delivered at Ile du Port on 3 June 2024.

