IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

MICHEL ATHANASE

Revision Side No. 4 of 2008

Miss Brigitte Confait for the Republic
Mr Freminot for the Respondent

JUDGMENT

Burhan J

This is a revision application filed by the Attorney General in terms of section 328 of the Criminal Procedure Code Cap 54, in respect of the sentence passed by the learned magistrate on the respondent (accused) in this case.

The respondent in this case was charged for stealing, contrary to and punishable under section 260 of the Penal Code. He was convicted on his own plea of guilt and sentenced to a term of 1 year imprisonment which was suspended for a period of three years. The application for revision moves court that the sentence imposed be revised as it is too lenient, as the law provides that a person found guilty of such an

offence is liable to a term of 7 years imprisonment.

Section 328 of the Criminal Procedure Code reads as follows:

> "The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrate's court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrates' Court."

Section 329 (1) (b) reads as follows:-

> "In the case of any proceeding in the Magistrates' Court the record which has been called for or which has been reported for orders, or which otherwise comes to his knowledge, the Supreme Court may –
>
> a).....
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> b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 316,318 and 319 and may enhance the sentence."

Learned counsel for the accused, submitted that there was no

mandatory requirement by law that the accused be given a custodial term and further submitted that the accused had cooperated with court, by pleading guilty at the first instant, without wasting the time of court.

In the case of ***The Republic v Roy Doudee 1980 SLR 50***, where the accused was found guilty in a charge of stealing from a vehicle and where the complainant was a tourist, a term of 6 months imprisonment was imposed.

In doing so even though the accused was a young person with a 4 month year old child and had no previous convictions, Seaton CJ rejected the application of learned counsel that a non custodial sentence be given stating-

"But crimes such as these committed against tourists give the country a bad image and must be deterred. I would have been inclined to substitute a sentence of nine months imprisonment..... But in deference to the efforts in mitigation by his learned counsel I believe the interests of justice will be served if there be substituted a sentence of 6 months imprisonment."

In the case of ***Agnes v The Republic 1990 SLR 92*** Allear J in upholding a term of 30 months imprisonment held;-

"It is an accepted fact that tourism is the mainstay of our economy. No effort is being spared to promote tourism the world over at enormous

cost. Incidents like the present one can only mar the favourable image outsiders have of Seychelles and its people and do irreparable harm to tourism and the economy. Such incidents ought to be discouraged if not stamped out altogether.

In this regard the courts have a role to play. Stiff sentences have to be meted against those offenders who prey upon tourists in this manner."

I am inclined to agree with the sentiments expressed in both the aforementioned cases. It is to be noted that in the 'Agnes case' the accused had a previous conviction and did not plead guilty to the charge but was found guilty and convicted after trial.

In this insant case, the particulars of the offence, disclose the fact that the victim was a German national on holiday in Seychelles and the theft was a "beach theft" which is in line with the offences committed on tourists as mentioned in the aforementioned cases. It is clear from the said decisions that the sentencing pattern for such offenders, be it there first time or not, is to impose custodial terms of imprisonment., to deter repetition of such offences. In order to maintain uniformity in sentencing, especially when such clear sentencing patterns exist, courts should maintain such patterns as far as possible and only when strong extenuating circumstances exist, should a court deviate from such existing patterns and individualize same. The fact that the accused pleaded guilty at the first instance, does not automatically entitle him to a suspended term of imprisonment, considering the nature of the offence in this case but on consideration of such a factor, leniency in

respect of the custodial term of imprisonment to be imposed, could be considered.

Considering the fact that the accused did plead guilty, without proceeding to trial, the fact that the accused is a first offender and keeping in mind the importance of suitable deterrent punishment being imposed for such offences, this court proceeds to sentence the accused to a term of 9 months imprisonment.

For the aforementioned reasons, the sentence imposed by the learned magistrate is set aside and a sentence of 9 months imprisonment substituted in its place. Time spent in remand to count towards sentence.

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M.N. BURHAN

JUDGE

Dated this 20th day of October 2010.

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