IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 67/2013

Appeal from Magistrates Court decision 242/2013

[2014] SCSC

VINCENZO DOGLEY
Appellant

versus

THE REPUBLIC

Heard:	16 May 2014
Counsel:	Mr. Nichol Gabriel Attorney at Law for appellant
	Mr. H. Kumar, Assistant Principal State Counsel for the Republic
Delivered:	4 July 2014

JUDGMENT

Burhan J

[1]   This is an appeal against sentence.

[2]   The Appellant was charged in the Magistrates' Court as follows;

Count 1

Entering Dwelling House with intent to commit a felony therein namely Stealing Contrary to and Punishable under Section 290 of the Penal Code Cap 158.

The particulars of offence are that Vincenzo Dogley, on the 14th June 2013, at Mont Fleuri, Mahe, entered the dwelling house of Nichol Chang-Leng with intent to commit a felony therein namely stealing.

Count 2

Stealing from Dwelling House Contrary to Section 260 as read with Section 264 (b) of the Penal Code Cap 158.

The particulars of offence are that Vincenzo Dogley, on the 14th June 2013, at Mont Fleuri, Mahe, stole from the dwelling house of Nichol Chang-Leng, (1) Ipad value SR10,000 being property of Nichol Chang-Leng.

[3]   The Appellant was convicted on both counts on his own plea and was sentenced to a term of 4 years imprisonment on count 1 and to a term of 4 years imprisonment on count 2. It was further ordered that both terms of imprisonment run consecutively which would mean that the Appellant was sentenced in total to a term of 8 years imprisonment.

[4]   The Appellant seeks to appeal against the sentence imposed on the grounds that the said sentence of 8 years was harsh and excessive as the Appellant was a first offender who had pleaded guilty at the first instance. Learned counsel for the Appellant further contended that as the two offences were committed during the same transaction the sentences should be made to run concurrently.

[5]   In the case of **Godfrey Mathiot v Republic SCA 9/1993** the Seychelles Court of Appeal held that in sentencing, courts should consider the principles of retribution, deterrence, prevention and rehabilitation. It further held that in appeals in respect of sentencing, the court would 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 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 by law.

[6]   When one considers the facts set out in mitigation as already mentioned the fact that the Appellant pleaded guilty at the first instance and the fact that he was a first offender, this court is of the view that the total sentence of 8 years is harsh and excessive. Based on these mitigating factors and the principle of proportionality, this court is of the view that a total term of 6 years imprisonment would be a just and appropriate term of imprisonment in this case.

[7]   It is apparent the learned Magistrate made order that the term of imprisonment run consecutively as the amendment to the Penal Code, Act 20 of 2010 amended the existing proviso of section 36 to read as follows;

"Provided that it shall not be lawful for a court to direct that any sentence under Chapter XXVI, Chapter XXVIII or Chapter XXIX be executed or made to run concurrently with one another or that a sentence of imprisonment in default of a fine be executed concurrently with the former sentence under section 28 (c) (i) of this Code or any part thereof.

[8]   For the aforementioned reasons the sentence imposed by the learned Magistrate is set aside. The Appellant is sentenced to a term of 3 years imprisonment on count 1 and to a term of 3 years imprisonment on count 2. Both terms to run consecutively. In total the Appellant is sentenced to a term of 6 years imprisonment. Time spent in remand and time served up to date to be counted towards sentence.

Signed, dated and delivered at Ile du Port on 4 July 2014

M Burhan
Judge of the Supreme Court