

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 243

CN 02/2020

(Appeal from CO56/2020)

In the matter between:

CHARLES ESTICO

(rep. by)

Appellant

and

THE REPUBLIC

(rep. by Gulmette Leste)

Respondent

Neutral Citation: *Estico v Republic* (CN 02/2020) [2021] SCSC 243 . (24 May 2021)

Before: Burhan J

Summary: Appeal from sentence. Sentence reduced.

Heard: 8th November 2020 and 23 November 2020

Delivered: 24 May 2021

ORDER

I proceed to reduce the sentence of five years imprisonment to a period of four years. Sentence served up to date and time spent in remand in respect of this particular case to count towards the sentence.

Copy of this sentence to be served on the Superintendent of Prisons.

JUDGMENT

BURHAN J

[1] The Appellant Charles Estico was charged in the Magistrates' Court as follows:

Count 1

Breaking and Entering into Building and Committing a Felony Therein Namely Stealing Contrary to Section 291 (a) of the Penal Code.

Particulars of offence are that, Charles Guyto Estico residing at Les Mamelles Mahe, on the 29th of February 2020 at Victoria Mahe broke and entered into building namely Restauration Boutique and stole 4 JB speaker charger, G tablet color white serial number GTQ 7728072502152, mobile phone cat serial B25-172300663, mobile Samsung serial number R 38ka33 R her, G Tablet, 1 mobile make Samsung color black A 10S1 make Samsung colour blue serial A 20s all to the value of Rs30,000/- being the property of Nicole Pool.

[2] He was convicted on his own plea of guilty and sentenced to a term of 5 years imprisonment by the learned Magistrate.

[3] Learned Counsel for the Appellant has appealed against the sentence imposed on the following grounds:

a) *“That the sentence imposed by the learned Magistrate is manifestly harsh, excessive and wrong in principle.*

b) *That the learned Magistrate erred in his sentencing by relying too heavily on the past criminal record of the Appellant who was not convicted in the year 2013”*

c) *The learned Magistrate failed to consider the principle of proportionality when passing sentence.”*

[4] The main ground urged by learned Counsel for the Appellant was that the learned Magistrate in his order sentencing the Appellant had not taken the fact that the Appellant was a first offender into consideration. It is clear from the record and the proceedings that learned Counsel for the prosecution had after conviction informed the Court that the convictions were spent. It would be pertinent at this stage to refer to section 2 of the Rehabilitation of Offenders Act CAP 307 which refers to a “spent conviction” as being a conviction in respect of which an individual has been rehabilitated in terms of section 3. It

is apparent from section 3 of the said Act, that sentences imposed in respect of convictions such as sentences of imprisonment for life, sentences of imprisonment for more than 60 months and sentences of detention during the President's pleasure are referred to as "excluded sentences" and convictions resulting in such sentences, are excluded from being considered as spent convictions.

- [5] It appears from the Appellant's previous conviction record that between the period February 2013 and November 2013, he has been convicted of three offences breaking and entering and sentenced to terms of imprisonment of ten years, five years and two years.
- [6] When this case was called on the 20th of May 2021, the Appellant informed Court he had been convicted in one case for imprisonment for 10 years and had appealed and been released in 2015. It appears this fact was not brought to the notice of the learned Magistrate at the time of sentencing. Having considered the relevant appeal judgment dated 29th October 2014 by Akiiki- Kiiza J, it is apparent that the sentence of 10 years imprisonment has been quashed by the Supreme Court in Criminal Side CN 20/2013, a fact confirmed by the prison authorities.
- [7] It is apparent that the Learned Magistrate was unaware of this fact at the time of sentencing as the previous conviction record still refers to the conviction and sentence of 10 years imprisonment. In my view this fact warrants a reduction in sentence.
- [8] I proceed to reduce the sentence of five years imprisonment to a period of four years. Sentence served up to date and time spent in remand in respect of this particular case to count towards the sentence.
- [9] Copy of this sentence to be served on the Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 24th May 2021.



M Burhan J.