

IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

HO – GHANA

AD - 2022

CORAM: *OFOE, J.A. (PRESIDING)*

JANAPARE BARTELS KODWO, J.A.

S. ROSETTA BERNASKO ESSAH, J.A.

CRIMINAL APPEAL: H2/01/2022

11TH MARCH, 2022

NELSON MAKAFUI FIAKPUI.....APPELLANT

VRS.

THE REPUBLIC.....RESPONDENT

JUDGMENT

S. R. BERNASKO ESSAH (MRS.), J.A.

In this appeal, filed at the instance of the Accused/Appellant, (hereinafter referred to as the Appellant) on the 30th of July 2021, He prays this Court to set aside his Sentence on grounds that: *“The sentence of Fifteen years imposed on a young offender is extremely harsh and excessive”*

The facts leading up to the instant appeal are that on the 24th of January 2018, at around 11:15 pm the Appellant, then a 19 year old trader asked the complainant one Mawuli Ayivi, a commercial Motor Rider (Okada) to take him to a place around the Ho Technical University. On reaching an isolated spot near JIMFUGAH hostel near Ho Technical University, the Appellant requested to alight and pretended taking out money to pay the complainant. He was suddenly joined by two others who were standing by a nearby bush wielding a knife and a gun.

They wrestled with the Complainant to take over his motor bike amidst threats that they will shoot him if he resisted or failed to hand over the motor bike.

Complainant shouted for help and the Appellant and his accomplices attempted to gag him with cell tape amidst gun shots. A private security person nearby overheard the shouts and gunshots and raised alarm which attracted others leading to the Appellant and his accomplices bolting from the scene after taking the Complainant's Techno mobile phone valued at Gh70.00 and cash of GH50. The motor bike, being unable to spark, they left it behind. The Appellant was arrested after identification and upon investigation he was charged with the offence of Robbery Contrary to Section 149 (1) of the Criminal and Other Offences Act (1960) (Act 29) as amended by Act 643. Upon conviction by the Circuit Court he was sentenced to Twenty years imprisonment with hard labour, the Court having also been informed that Appellant was 'known', in that he was serving a 24 month jail term for stealing a motor bike.

Dissatisfied with the sentence, the Appellant appealed against it to the High Court on grounds that the sentence was harsh having regard to his age and the circumstances of the case.

In its judgment, delivered on 14th July 2021, the High Court rejected the submission of Counsel for Appellant, to the effect that Appellant ought

to have been sentenced under Section 46(1) (a) and 46(8) of Juvenile Justice Act (2003) Act 653 and sent to a correctional facility. The Court held that Appellant committed an offence, the punishment of which carried no fine, therefore although a young offender, he dislodged himself from the provisions under the Juvenile Justice Act and must be treated as an adult.

The Court nonetheless took into consideration the youthful age of the Appellant and the fact that the offence though grave was not aggravated in that no harm was occasioned to the Complainant. The Court was also of the view that the imposition of 20 years IHL was harsh and excessive and reduced it to 15 years. The instant Appeal is against the reviewed sentence.

Counsel for Appellant, argues in his submission that Article 19(6) of the 1992 Constitution of the Republic of Ghana prohibits the imposition of a sentence for a criminal offence that is severer in degree than the maximum penalty imposable. The provision is as follows:

“19 (6) No penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed.”

He acknowledged that in Section 149 of the Criminal Offences Act of (1960) Act 29 as amended by Act 646 of 2003, Robbery is a first degree felony. That the sentence upon conviction for Robbery is provided for in Section 149 (1) of the Act 29 as follows:

(1) “Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily on indictment, to imprisonment for a term of not less than ten years, and where the offence is committed with the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less than fifteen years.”

He continues his argument by saying that the preamble to the Juvenile Justice Act (2003) Act 653 (JJA) provides the purpose for enacting the Act as to provide a justice system for Juvenile Offenders and punishment for young offenders.

That Section 60(1) of the Act 653, which is the Interpretation Section of the Act defines a 'young person' to mean a person who is eighteen years or above eighteen years but under Twenty-one (21) years. A 'young offender' is also defined to mean "*a person who has been convicted of an offence for which the Court has power to impose a sentence of imprisonment for one month or upwards with option of a fine.*"

That Section 46(1) (d) of the Act, provides the punishment to be meted out to a young offender who commits a serious offence, as defined in the Act which includes Robbery, as follows:

*"46(1) Where a juvenile or young offender is ordered to be sent to a centre, the detention order shall be the authority for the detention and **the period shall not exceed***

*(d) **three years for a serious offence.**"*

That Section 46(3) of the Act, further provides that a 'young offender' who is a person above 18 years, of age shall be detained in a Senior Correctional Center.

He contends therefore that Appellant being a young offender, i.e. 19 years of age at the time of his conviction, then notwithstanding that at the time He committed the offence of Robbery, he was known to have a previous conviction, he nonetheless ought to have been convicted and sentenced under the Juvenile Justice Act and not as an adult.

He submits that in his view, the *“misapplication of the Act 653 when it comes to the young offenders who committed serious offence under the Act has to do with the definition of the ‘young offenders’ under the interpretation section of the Act”*. Reference page 6 of Written Submission of Appellant.

He contends further that the phrase *“..... for which the Court has power to impose a sentence of imprisonment for one month or upwards with an option of a fine”* in the definition of a “young offender” is the source of the misinterpretation of the relevant provisions of the Juvenile Justice Act leading to situations where young offenders are sentenced as adult offenders.

That the erroneous interpretation has occasioned substantial injustice to young offenders, and defeats the purpose of enacting Act 653, when it comes to young offenders who commit Robbery and other related **offences for which there is no option of a fine.**

Further that notwithstanding the definition of ‘young offender’ in the interpretation section of Act 653, the position of the law is that where an enactment contains a definition Section, it would not necessarily apply in all contexts in which a defined word may be used. He relied on the case of **BCM Ghana Limited vs. Ashanti Goldfields (2005-2006) SCGLR 602** wherein it was held that although there is a presumption that the same words in a statute bear the same meaning, this is however a rebuttable presumption. That same is the case even if the words are defined in a definition section.

He submits further that the Common Law position and as approved by the Supreme Court of Ghana in the case of **Kumnipah II vs Ayirebi (1987-88) 1 GLR 265**, is that where an enactment contains a definition section it would not necessarily apply in all contexts in which a defined word may be used.

That Section 38 of the Interpretation Act 2009 (Act 792), which is on application of interpretation provisions has supported this Common Law position and restated same that, where an enacted contains a definition Section it would not necessarily apply in all the contexts in which a defined word may be used.

It is his view that the interpretation section of an enactment should not be so construed as to render the purpose of the law absurd and unworkable. He argues that if the purpose for enacting Act 653 was to prevent young persons in conflict with the law from being kept in prison custody for a long period, then the phrase “..... *for which the Court has power to impose a sentence of imprisonment for one month or upwards with an option of a fine*” in the definition of a ‘young offender’ cannot be construed to mean that when a young person commits an offence which is not punishable with an option of a fine, he is to be treated as an adult criminal.

He contends finally that having due regard to the provisions of Section 46(1), (7) and (8) of Act 653, if the said definition of ‘young offender’ is purposively construed, then any sentence to be imposed on such a convict irrespective of the nature and manner of commission of the serious offence, should not exceed three years.

In their Submission in rebuttal the Respondent contended that the Juvenile Justice Act does not grant general mitigation to all young persons who are in conflict with the law. The law provides limited period of sentence to only young persons who commit offences that carry an option of a fine.

That Section 149 of Act 29 as amended by Act 646 provides the punishment for Robbery. The law also provides the minimum sentence

to be imposed on a convict as ten years where the Robbery is with bare hands, and a minimum sentence of fifteen years, where the convict used an offensive weapon or missile. However, the charge and conviction of Robbery of the Appellant has no option of a fine.

Thus even though the Appellant is a young person he is not a young offender.

Further that the Court has no power to impose a sentence of imprisonment of one month or upwards on a robbery convict neither does the Court have the power to impose a fine on such a convict. They contend finally that any further reduction in the sentence will go below the statutory required minimum sentence which is not permissible.

Upon perusal of the Record of Appeal and the respective submissions of Counsel we are of the opinion that the main issue which if resolved will dispose of this appeal is whether or not the definition of '**young offender**' in Section 60 (the interpretation Section) of the Juvenile Justice Act has been misinterpreted.

We must say from the outset and as this delivery will show that the legislature intended the definition of 'young offender' to be as provided for in the interpretation section of the Juvenile Justice Act. And in our view there is no misinterpretation of the words 'young offender' as contended by Counsel for the Appellant.

For the purpose of emphasis we will reproduce the definition of 'Young offender' as provided in the Section 60, the Interpretation section of the Juvenile Justice Act 653:

"Young offender" means a young person who has been convicted of an offence for which the Court has power to impose a sentence of imprisonment for one month or upwards **WITH** the option of a fine"

A '**Young Person**' is also defined in the Same Section as follows:

“Young person” means a person who is **eighteen years or above eighteen years but is under twenty-one.**

Thus, a young offender is a person eighteen years or above eighteen years but under twenty one years, who has been convicted of an offence, for which the Court has been given power by statute to impose a sentence of one month or upwards **with the option** of a fine.

It is worthy of note, that the definition of ‘young offender’ in Section 60 of the Act is distinctively different from that of ‘Juvenile offender’ in the same section.

A ‘Juvenile offender’ is defined as follows:

*‘Juvenile offender’ means a juvenile who has been convicted of an offence for which the Court may impose a sentence of imprisonment for one month or upward **without** the option of a fine.*

A juvenile is defined in Section 60 as follows: *“juvenile” means a person who is under the age of eighteen years who is in conflict with the law”.*

By this distinction it is apparent that the intention of the legislature is to provide different regimes for dealing with each offender, Juvenile and Young Offender.

The two different offenders are distinguished by age, and power of Court to impose sentences. The power of the Court regarding a ‘Young offender’ is to impose a sentence of one month or upwards **with** the option of a fine while, in the case of a ‘Juvenile Offender’ the Court has power to impose a sentence of imprisonment for one month or upward **without** the option of a fine.

Obviously if the Legislature had intended the ‘Young Offender’ and ‘Juvenile Offender’, to be categorized as the same it would not have distinguished them.

The difference in the definitions of 'Young Offender' and 'Juvenile Offender' aside, the Juvenile Justice Act provides very clear differentiation in the manner the two offenders are dealt with when they find themselves in conflict with the law, such that it can be said that the intention is to restrict the Juvenile Court's powers over 'young persons' as against Juveniles. For example, whereas the Juvenile Justice Act grants **exclusive jurisdiction** to the Juvenile Court to hear a charge against or dispose of a matter which affects a Juvenile, (save for matters where a Juvenile is charged for an offence which if committed by an adult would be punishable by death), the Act does not extended same to matters relating to a 'young person'.

Section 17 of the Juvenile Justice Act provides:

17 Exclusive jurisdiction and transfer

*(1) A Court of summary jurisdiction other than a juvenile Court **shall not** hear a charge against or dispose of a matter which affects a person who appears to the Court to be a juvenile, if the Court is satisfied that*

(a) the charge or matter is one in which jurisdiction has been conferred on juvenile Courts,

The obvious antithesis is that 'young persons' who are in conflict with the law, can be tried in adult Courts, or Courts of summary jurisdiction.

In point of fact, in Section 17(3) of the Juvenile Justice Act the power of the Juvenile Court to hear a case, where a charge is made jointly against a juvenile and person above 18 years is ousted.

Section 17 (3) provides that "A charge made jointly against a juvenile and a person who has attained the age of eighteen years **shall** be heard by a Court of summary jurisdiction other than a juvenile Court."

Thus a Court of summary jurisdiction has absolute jurisdiction to hear cases in which a young person is jointly charged with the juvenile.

Also, when such a juvenile is on a charge jointly with a person who has attained the age of 18 years, the law provides that it is only the juvenile offender who must be remitted to the Juvenile Court for sentencing under the Juvenile Justice Act.

Section 18—Remission of Juvenile to Juvenile Court for Sentence.

(1) Where a juvenile appears before a Court of summary jurisdiction other than a juvenile Court on a charge made jointly against the juvenile and a person who has attained the age of eighteen years and the juvenile offender and the juvenile is convicted by the Court, the Court shall not sentence the juvenile offender but shall remit the case to the juvenile Court for sentence.

Thus, by Section 18 the person convicted by the Court, who has attained the age of 18 years and above, **shall not** be remitted to the Juvenile Court for sentencing. Such a person can be tried and convicted and sentenced by a Court of Summary jurisdiction.

Significantly Section 19 (4) of the Juvenile Justice Act provides that where a person brought before the Juvenile Court is proved not to be a Juvenile but of eighteen years or above at the time of commission of the offence the accused shall be deemed not to be a juvenile and shall be subject to Act 30.

Section 19 (4):

Where it appears to the Court that the person brought before it has attained the age of eighteen years, that, person shall for the purposes of this Act be deemed not to be a juvenile and shall be subject to the Procedure Act.

When the above sections are read together with the definition of ‘young offender’ then it becomes manifest that the legislature intended the definition of ‘young offender’ to be as it is in the interpretation section of the Juvenile Justice Act. The legislative intention, was to limit the jurisdiction of the Court under the Juvenile Justice Act over ‘young persons’ who are in conflict with the law, unlike in the case of Juveniles.

Therefore, in order to be categorized as a ‘young offender’, under the Juvenile Justice Act, then the offence with which the young person has been charged, if convicted, must be such that the Juvenile Court has power to impose a term of imprisonment of one month and upwards, **with the option of a fine**, otherwise the young person must be made subject to the Procedure Act.

Counsel for Appellant has relied on Section 46 (1d) of the Juvenile Justice Act on **Duration of detention** to say that the Appellant is to be in detention for no more than 3 years for his offence. We are unable to agree with him.

The Section 46(1) (d) provides as follows:

(1) Where a juvenile or young offender is ordered to be sent to a centre, the detention order shall be the authority for the detention and the period shall not exceed

(d) three years for a serious offence.

This section must be read within the context of the whole Juvenile Justice Act and in particular Section 19 (4)

Section 19 (4):

Where it appears to the Court that the person brought before it has attained the age of eighteen years, that, person shall for the purposes of this Act be deemed not to be a juvenile and shall be subject to the Procedure Act.

When same is done, it becomes obvious that the interpretation sought to be put on this section 46(1)(d) by Appellant's Counsel is a misconception of the Juvenile Justice Act. The Procedure Act prescribes the sentence for the offence. A juvenile Court which is required to subject a 'young person' before it to the Procedure Act, has no power to impose a sentence less than that prescribed by the Procedure Act. Such a Court cannot make a detention order of three years for a crime of robbery when the Procedure Act provides otherwise for the conviction of Robbery.

That apart, section 46 (1d) relates to detention orders and duration of detention and the interpretation of it must be kept within that context.

We are unequivocal and resolute in our position that there is no misconstruction or misinterpretation of the term 'young offender' as defined, contrary to the contention of Counsel for Appellant. The words are precise and unambiguous and admit of only one meaning which is that set out in the Act.

The appellant herein was 19 years at the time of the offence. The offence was committed with the use of an offensive weapon which was a gun and a Knife. He was charged and convicted in the Circuit Court for the

offence of Robbery. Robbery is a First Degree Felony and by Section 149 of the Criminal Offences Act, Act 29, it is defined as follows:

Section 149—Robbery

(1)Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily on indictment, to imprisonment for a term of not less than ten years, and where the offence is committed the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable imprisonment for a term of not less than fifteen years.

The offence for which the Appellant was convicted does not provide for the option of fine for imprisonment. The appellant cannot be categorized as a young offender within the definition of same in the Juvenile Justice Act.

Appellant, was appropriately charged and tried under **Criminal Offences Act, Act 29/60** as amended by **Act 646/2003**. The enactment which created the offence of Robbery, provided for the minimum sentence for that offence, and the Court has no power to impose a lesser term.

Applying all the principles that guide the Appeals Court in its deliberations when exercising its powers of rehearing, we come to the conclusion that the Appellant has failed to convince us that the trial judge erred in the sentence of 15 years imposed on Appellant. He has also failed to convince us that an erroneous interpretation has been put on the phrase ‘young offender’ by the Courts.

We accordingly dismiss the appeal confirming the trial judge’s sentence in judgment.

(SGD.)

S. R. BERNASKO ESSAH (MRS.)
[JUSTICE OF APPEAL]

V. D. OFOE, (JA), I agree

(SGD.)

V. D. OFOE
[JUSTICE OF APPEAL]

J. BARTELS KODWO (MRS.), (JA), I also agree

(SGD.)

JANANPARE BARTELS KODWO
[JUSTICE OF APPEAL]

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