IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE SITTING AT NSAWAM MEDIUM SECURITY PRISONS ON TUESDAY, 11TH OCTOBER, 2022

CORAM: HIS LORDSHIP JUSTICE KOFI NYANTEH AKUFFO – JUSTICE OF THE HIGH COURT

CASE NO. D15/55/2020

MOHAMMED KWAKU SALIFU

V.

THE REPUBLIC

JUDGEMENT

INTRODUCTION

Mohammed Kwaku Salifu (hereinafter called "Appellant") appeared before the Circuit Court, sitting at Accra he faced one (1) count for the offence of Defilement: Contrary to Section 101 of Act 29/1960.
The Appellant pleaded guilty.
On the 12th day of August,2015 the Appellant was duly convicted and sentenced to twelve (12) years imprisonment with hard labour.
The Appellant is aggrieved and dissatisfied with the sentence imposed by the trial Court.
Accordingly, the instant Appeal for mitigation of sentence has been filed.
Given the fact that the instant Appeal relates to sentence, I deem it incumbent to spell out the applicable legal principles governing sentencing.

APPLICABLE PRINCIPLES ON APPEALS AGAINST SENTENCING

At the outset, it is apt to establish the proposition that any Appeal, be it against sentence, conviction or both is by way of rehearing.
To this effect, it is totally incumbent upon the Appellate Court to consider the evidence on record and consider whether the trial Judge came to the right conclusions.
The case of **Bosso v. The Republic (2009) SCGLR, 420** is directly in point.
The Esteemed Jurist, Georgina Wood CJ, stated as follows:

> **" … The Rule that Appeals are by way of rehearing is not limited to substantive Appeals only, but the sentences passed, provided an Appeal lies therefrom …"**

It must be noted that when an Appellant seeks to get the sentence meted out reduced, he must be aware that there exists some general sentencing principles.
It is for the above reason that Ansah JSC stated as follows in **Mohammed Kamil v. the Republic (2011) 1 SCGLR at 300:**

> **" … Where an Appellant complains about the harshness of a sentence, he ought to appreciate that every sentence is supposed to serve a five-fold purpose, namely, to be punitive, calculated to deter others, to reform the offender, to appease the society and to be a safeguard to this country …".**

Indeed, with regards to general sentencing principles, same was given a detailed elaboration in the oft-quoted case of **Kwashie v. The Republic (1971) 1 GLR 488, CA.**
Azu-Crabbe JA (as he then was) stated as follows:

> **" … In determining the length of sentence, the factors which the trial Judge is entitled to consider are (1) the intrinsic seriousness of the offence; (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place, or in the country generally; (5) the sudden increase in the incidence of the particular crime; and**

(6) Mitigating and aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed. Thus, a Judge in passing sentence may consider the offence and the offender as well as the interest of society …".

It must be noted that the need for a trial Judge to take into account the offence, offender and society is of paramount importance. It is precisely for the above reason that Baidoo JA (as he then was) remarked as follows in **Republic v. Selormey (2001-2002) 2 GLR,424:**

" … On the authorities, in passing sentence, a Judge had to consider the offence, the offender and the interest of society. Thus, although there was no scientific scale by which punishment was measured, a sentence had to be imposed to fit both the offender and the crime …".

With regards to sentencing, it is trite learning that same is a matter of discretion for the trial Judge.
However, it is of utmost importance that the discretionary powers of the court is exercised within the confines of established principles.
Specifically, it is incumbent upon the sentencing authority to take into account the relevant mitigating and aggravating factors.
Additionally, should the trial Judge decide to impose a lenient or a deterrent sentence, it is of paramount importance that cogent reasons are given for the sentence imposed.
Once a trial Judge has duly adhered to the above requirements, it does not lie with the Appellate Court to disturb the sentence imposed by the trial court.

However, the contrary hypothesis is also true.

If the trial Judge fails, refuse or neglect to take into account the applicable mitigating and aggravating factor or give reasons for the sentence imposed, the Appellate Court would be fully entitled to interfere with the sentence imposed by the trial Judge.

The above propositions have been duly established in a myriad of authorities in this jurisdiction.

The ratio Descendendi of three (3) Eminent Jurists are directly in point.

In Banda v. The Republic (1975) 1 GLR at 52, Osei-Hwere J (as he then was) stated as follows:

> **" … The exercise of the power of sentencing lay entirely within the discretion of the trial Court, and provided the sentence fell within the maximum permitted by the statute creating the offence and the trial Judge duly considered those matters that should go in mitigating of sentence, an Appellate Court should not disturb the sentence only because it would have felt disposed to impose a lighter sentence if it had tried the case at first instance …".**

On a similar note, Apatu-Plange J (as he then was) had the following to say in **Assah alias Asi v. The Republic (1978) GLR at p2**:

> **" … Now in dealing with an Appeal of this nature, the court has to find out whether there were any mitigating factors which the trial Magistrate took or failed to take into consideration.**
>
> **If the record reveals that he took all the said mitigating factors into consideration before imposing the sentence, then discretion can be said to have been properly exercised, and in the absence of any special circumstances, an Appellate Court will be slow to interfere with such a sentence. If, however, the record does not reveal that the trial Magistrate took any such mitigating circumstances into consideration, then the Appellate Court will find out whether the said mitigating factors were such that if the trial Magistrate had adverted his mind to them, he would have probably not have imposed the said severe sentence …".**

Taylor J (as he then was) on his part, stated as follows in **Haruna v. the Republic (1980) GLR, 189:**

> **" … The question of sentence was a matter of discretion with all courts of justice. However, the discretion was exercisable on well-known principles. In awarding sentence, particularly when the court set out to award a deterrent sentence, all the circumstances must be considered.**

If there were circumstances tending to mitigate the application of the deterrent principle, then reasons must be given why those circumstances must be ignored if a deterrent sentence was imposed. If that was not done, then the discretion has not been properly exercised and the Appellate Court could interfere with the said exercise of discretion. If, however, all the circumstances relevant to the question of the appropriate sentence have been adequately considered, the exercise of the discretion by a lower court ought not be impugned by an Appellate Court …".

The factors, guidelines and principles stated ut supra, would be taken into due consideration in determining whether the instant Appeal ought to succeed or fail.

Taking full cognisance of the aforementioned and juxtaposing same with the record of evidence available to this Appellate Court, I am of the considered view that the trial court duly took into account all relevant and applicable matters.
Specifically, mitigating and aggravating factors were taken into due consideration.
The trial court did not commit any errors of law that occasioned a substantial miscarriage of justice.
Again, the sentence imposed on the Appellant was, to all instants and purposes, within the range of sentences available to the trial court to impose. The decision of this court is fortified when I take into account the case of **Gumbs (1926) 19 Crim.App. R,74.** Lord Hewart CJ stated as follows:

"…This court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence, there must be some error in principle…".

CONCLUSION:

Taking into account all the aforementioned, I am of the considered view that the instant Appeal against sentence lacks merit.

The appeal is accordingly dismissed.

---

* **Appellant not represented by Counsel.**

SGD.
HIS LORDSHIP JUSTICE KOFI AKUFFO
(JUSTICE OF THE HIGH COURT)