IN THE HIGH COURT OF JUSTICE HELD AT DENU ON TUESDAY THE

20TH DAY OF JUNE, 2023 BEFORE HER LADYSHIP JUSTICE NAANA

BEDU-ADDO HIGH COURT JUDGE

SUIT NO. E12/16/2023

WISDOM ABORNYO

V.

THE REPUBLIC

JUDGMENT

Before this Court is an Appeal against the judgment of the Circuit Court, Aflao dated 11th July, 2011. The Appellant herein was charged with the offence of conspiracy to commit crime to wit, robbery, contrary to Section 23(1) of Act 29 and Robbery contrary to Section 149 of Act 29.

FACTS

On 19th January, 2011, the Appellant and another person allegedly hired a Daewoo taxi cub with registration number GN2762-10 at Kasoa to Nyanyano in the Central Region. At a section of the road, the appellant allegedly pulled and pointed a pistol on the taxi cab driver ordering him to stop and surrender the car key to the Appellant. The driver of the cab obliged and after handing over the key to Appellant, attempted to escape. He was

however pursued and beaten to the point of unconsciousness by the Appellant and his accomplice. The Appellant and his accomplice drove the taxi cab away leaving the taxi driver for dead. The Appellant allegedly hid the car in a house in Accra and refused to show the Police the house in which the car was being kept since his trial and conviction.

Sometime in February, 2011, at about 10:00pm, whilst the Appellant and his accomplice were driving the car to Aflao, the Kasseh Police arrested the Appellant for driving with an expired license and also one head light at night. During the arrest of the Accused/Appellant, the accomplice managed to escape. Later, the Appellant managed to reach Aflao.

Appellant allegedly sought the assistance of one Togbui Adorkor II to negotiate with the Police so that they would release the taxi cab but after being alerted by

Togbe, the Police went with him, Torgbui to Kasseh and took the car to Dzodze. Three operatives, of the National Security in Aflao purportedly succeeded in luring the Appellant to Dzodze where the Appellant was arrested. When a search was conducted at the Appellant's residence, the Police found a Barclays Bank Cheque book which belonged to one Kwesi Boafo Larbi of Bolgatanga.

The owner of the taxi was traced to Senya Bereku. After investigations, the Appellant was charged on 10th March, 2011 after being arraigned before the Circuit Court, Aflao, with the following charges:

i) Conspiracy to commit crime to wit Robbery contrary to Section 23(1) of

Act 29 and ii) Robbery Contrary to Section 149 of Act 129

On 11th July, 2011, the Circuit Court Judge gave his decision convicting the Appellant of both charges, supra and consequently sentenced him to a term of forty-five years 1.H.L. for the offence of Robbery and five (5) years for the offence of conspiracy to commit robbery. He was to serve both sentences concurrently.

APPEAL

Pursuant to being granted leave by this Court on 13th December, 2022, the Appellant filed a Notice of Appeal. By the Notice of Appeal, the Appellant wishes to appeal against the conviction and seeks mitigation of the sentence on the ground of mitigation of sentence. He filed the following additional issues:

1. That the Appellant is a first-time offender who has no record of previous conviction prior to committing the previous offences.
2. That the Appellant was not represented by a Counsel during the trial of the case and he lacks legal requirement for any meaningful defense regarding the offence.
3. That the forty-five (45) year jail term, was proof that no mitigating factors were considered prior to the imposition of the sentence.
4. That the Appellant still regrets his actions and has demonstrated remorse over the years, hence his plea for reduction of sentence to barest minimum.
5. The Appellant was in his prime age then and has spent his useful strength in prison.
6. The Appellant has learned his lessons which are crucial and vital for life.

7. That the Appellant left behind children with his poor old mother and their upbringing is in jeopardy.

8. The Appellant prays for the Honorable Court to consider his predicament and reduce his lengthy sentence.

The Appellant filed his Written Submission on 13th December, 2022 in which he stated that the appeal is definitely against the sentence of forty-five (45) years in hard labour which to him, appears harsh and excessive, having regard to the circumstances surrounding the case per the record of proceedings.
The Appellant further argues that he was unrepresented during the trial and he was therefore handicapped and unskilled in the criminal proceedings, defense in person will not result in his favour. He further stated that the offence was committed at Kasoa in the Central Region. The arrest was made both at Ada and Dzodze and the Appellant was tried and convicted in Aflao.

GROUNDS OF APPEAL

The Appellant's main ground of appeal is for the mitigation of the sentence.

APPELLANT'S CASE

The Appellant raised a number of legal arguments, including, but not limited to the following:

He relied on the Supreme Court Case of Kamil v. Republic [2011] 1 SCGLR

300 at pages 315-316 where Asaah JSC ruled as follows: "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 safe guard the country."

Other authorities the Appellant relied on to buttress his case include: Apaloo v.

The Republic [1975] 1 GLR 156 @ Page 159 where it was held that "the Court would interfere only when it was of the opinion that the sentence was manifestly excessive having regard to the circumstances of the case or that the sentence was wrong in principle. Kwashie v. The Republic [1971] 1GLR 488 states the factors governing the Court's discretion when imposing a sentence upon conviction as follows:

> i) The intrinsic seriousness of the offence ii) The degree of revulsion felt by law-abiding citizens of the society for the particular crime iii) The premeditation with which the criminal plan was executed iv) The prevalence of the crime within the particular locality where the offence took place or in the country generally.
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> v) The sudden increase in the incidence of the particular crime; and vi) Mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed.

It was held in Frimpong alias Iboman V. The Republic [2012] SCGLR 297 that whilst the minimum sentence for robbery has been fixed at 10 years simpliciter in the cases where offensive weapons have been used, the legislature has deemed it fit and proper to

enhance the minimum to fifteen (15) years imprisonment. Since robbery is a first-degree felony, the maximum sentence has not been fixed. The

Court can therefore fix it for any number of years it deems suitable.
The Appellant further argues that the portion of the law in Ghana as per the case of Abu & Others V. The Republic [1991] 2 GLR 42-43 is that in deciding whether a sentence is too severe and ought to be interfered with or not the Court ought to consider the gravity of the offence taking into account all the circumstances of the offence and such other matters as the age of the offender, his health, prevalence of the offence, the manner or mode of the commission of the offence, whether deliberately planned etc. A sentence can be considered too severe if mitigating factors are ignored in passing the said sentence.

Appellant further argues that the Appellant is a first-time offender and that factor ought to have been considered by the Court in passing the been considered by the

Court in passing the sentence. Reference was made to the case of the Republic V. Nana Ama Agyeiwaa, Osei Kwame and Avo Kevorkion (Acc 7/2012).

In conclusion, the Appellant would like this Court to reduce his sentence to the barest minimum since he claims he has been reformed.

The Republic filed their Written Submission on 9/2/23 and he stated that the Appellant's arguments seem to have made no submission on the conviction. He argued that the offence of conspiracy to commit a crime cannot be held against one person. Section 23 and 24 of the Criminal Offences Act, 1960 (Act 29) provides that it is an offence that affects two or more persons. He argues that the Trial Court convicted the Appellant for the offence of conspiracy to commit robbery which he deems not proper in law since one

person cannot be found guilty for the offence of conspiracy. He prays that this Court should set aside the conviction and sentence for the offence of conspiracy to commit robbery.

On mitigation of sentence, the Republic argues that in the case of Kwashie & Anor. v. Republic [1971] 1GLR 488, The Court reiterated the principle that a sentence must serve a purpose. He further quoted Hilbery J. in the Blake case at page 383 where the learned judge stated that "This sentence of 42 years imprisonment for spying had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others, and it was meant to be a safeguard to this country."

In the instance suit, after the accused pleading "not guilty" a full trial was held and

the Appellant was properly convicted and sentenced to 45 years imprisonment 1.H.L. The judge, before passing the sentence, spoke about the rise in spate of robberies and then went on to sentence the Appellant to serve as a deterrent. In

Kwashie & Anor. v. The Republic [1971] 1GLR 488, it was held that where the Court decides to impose a deterrent sentence the good record of the accused becomes irrelevant. The 45-year sentence is within the limits established by law. According to Section 296 (1) of Act 30, where a crime is declared a first-degree felony by any enactment and the Punishment for the crime is not specified, a person convicted thereof shall be liable to imprisonment for life or any lesser term.

LEGAL ANALYSIS

The current definition of Conspiracy as contained in the revised law by the Law Review Commissioner- Laws of Ghana (Revised Edition) Act 1998 (Act 562), provides as follows:

"Where two or more persons agree to act together with a common purpose for in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet a criminal offence.

The offence of conspiracy does not lie against one person and at any point in time it should be committed by two or more persons. Reference: Doe v. Republic [19992000] 2GLR 32.

Where there is evidence that the Accused person conspired with other people who are not mentioned on the charge sheet he could be convicted. In the instant case, there was evidence that the Appellant did not commit the crime alone. In cross examination PW1, the Appellant asked PW1:
"Q: Where specifically are you alleging, we collected the taxi?

A: Millenium City"

From the foregoing, the conviction of conspiracy will still stand.

Regarding the sentencing, in the case of Frimpong alias Iboman v. The Republic supra it is stated that Act 646 provided for only the minimum sentence that may be imposed on a convict for robbery but not the maximum sentence. That has been left to the discretion of

the judge. Since Robbery is a first-degree felony, the maximum sentence can be imprisonment for life or any lesser term.

In imposing the appropriate sentence, the Court may take into consideration mitigating and aggravating factors. The aggravating factors include the seriousness of the offence of which the accused has been convicted; how the citizenry frown upon that particular offence; the premeditation with which the accused committed the offence; the prevalence of the offence in the country and the need to use punishment to deter and also prevent persons of like mind from committing the offence; etc. The mitigating factors include the accused being a first offender, the guilty plea taken by the accused, the extreme youth or age of the offender; the remorse shown by the person etc.

In convicting and sentencing the Appellant herein, the trial judge stated as follows:

"I am of the view that armed robbery is on the increase and has become a national problem. The accused deserves a harder sentence to serve as a deterrent to others that it is not good to rob." Since the judge intended the sentence to serve as a deterrent, he did not need to consider any mitigating factors which were not even put before the Court.

From the foregoing, the Court upholds the conviction and sentencing of the Appellant and hereby dismisses this appeal.

(SGD)

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JUSTICE NAANA BEDU-ADDO

HIGH COURT JUDGE

20TH JUNE, 2023