IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE SITTING AT NSAWAM MEDIUM SECURITY PRISONS ON TUESDAY, 13TH JUNE, 2023

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

CASE NO. D15/24/2020

AHMED NAAS

V.

THE REPUBLIC

JUDGEMENT

INTRODUCTION

Ahmed Naas (hereinafter called "Appellant") appeared before the Circuit Court sitting in Techiman facing one count of the offence of Stealing, Contrary to Section 124(1) of Act 29/1960.

The facts that gave rise to the instant prosecution of the Appellant is that, he stole two (2) accumulators (batteries) belonging to a company called Waaf Gro Company Limited.

After taking the accumulators, the Appellant boarded a taxi to enable him sell the Accumulators. He engaged the taxi driver in a conversation in which he confessed that the accumulators were stolen.

The taxi driver drove the Appellant to a police station where he was arrested.

The Appellant pleaded guilty and was convicted accordingly.

The trial judge sentenced him to fifteen (15) years in prison.

Aggrieved by and dissatisfied with both the conviction and sentence, the Appellant has appealed against both.

The following are the grounds of appeal

(a) The conviction was wrong and unwarranted.
(b) The sentence is too harsh and unmeritorious.
(c) There was miscarriage of justice.

For the sake of a systematical presentations, I will deal with the under-listed issues.

(a) Applicable burden and standard of proof.
(b) Element of offence.
(c) Applicable principles on Appeals against conviction.
(d) Applicable principles on Appeal against sentence.
(e) Decision of the Court.
(f) Conclusion.

BURDEN AND STANDARD OF PROOF

It is apt to remind ourselves that in all criminal trials in this jurisdiction, it behoves on the prosecution to prove the guilt of the accused person and moreover, the guilt of the accused person must be proved beyond reasonable doubt.
The above proposition has been duly codified in the Evidence Act 1975 (NRCD 323). The evidence Act, so far as is material provides:

> **"…11(2) – In a criminal action, the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence, a reasonable mind could find the existence of the fact beyond reasonable doubt.**
> **13(1) – In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt…".**

With regards to the burden and standard of proof laid on the Appellant herein, it must be noted that there exists no onus on him to prove his innocence. It suffices that he raises reasonable doubt as to his guilt.

The Evidence Act (supra) so far as is relevant reads:

> **"…11(3) – In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.**
>
> **13(2) – Except as provided in Section 15(3) in a criminal action the burden of persuasion, when it is on the accused as to any fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt…"**

The above are the applicable burden and degree of proof in the instant case.

ELEMENTS OF OFFENCE

The offence of stealing is grounded on Section 125 of Act 29/60. It reads:

> **"A person steals if he dishonestly appropriates a thing of which he is not he owner".**

What amounts to appropriation?

Section 122(2) of Act 29/60 reads as follows:

> **"An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership of that thing, or the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing".**

Also of relevance is Section 120(1) of Act 29/60 which describes "Dishonest Appropriation" in the following manner:

> **"An appropriation of a thing is dishonest if it is made by a person without claim or right, and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing, or that**

the appropriation would, if known to the other person, be without the consent of the other person".

Taking all the above in unison, the following are the elements that need to be proven for the instant offence:

(a) That the accused person is not the owner of the items listed on the charge sheet.
(b) That the accused person does not have a right or claim to the items listed on the charge sheet.
(c) That the accused person took the items from the complainant herein; and
(d) That the accused person took the items knowing that doing so was without the consent of the complainant.

With regards to the punishment for stealing, the accused person faces a maximum of twenty-five (25) years, if convicted.

- **See Section 124(1) of Act 29/60.**

- **See also Section 296(2) and Section 296(5) of Act 30/60.**

APPLICABLE PRINCIPLES ON APPEALS AGAINST CONVICTION

It is instructive to note that all Appeals are by way of rehearing.
This applies equally against appeals against conviction and appeals against sentence.
It is pursuant to the above prepositions that the distinguished jurist Georgina Wood, CJ stated as follows in **Bosso v. The Republic (2009) SCGLR at 420:**

"… The rule that Appeals are by way of rehearing is not limited in substantive Appeals only, but the sentences pass provided on Appeal lies therefrom…"

So, upon what grounds would an Appellate Court grant an Appeal against conviction?

Section 31(1) of Act 459/1993 reads as follows:

"… Subject to subsection (2) of this Section, an Appellate Court on hearing any Appeal before it in a criminal case shall allow the Appeal if it considers that the verdict or conviction or cannot be supported having regard to the evidence or that the judgement in question ought to be set aside on the ground of a wrong decision on any question of law or fact or that on any ground there was a miscarriage of justice and in any other case shall dismiss the Appeal…"

As can clearly be established from the above legal provision, there exist one main ground. That is to the effect that there was substantial miscarriage of justice.

As to what constitutes substantial miscarriage of justice, there was three (3) grounds upon which same can be grounded.

The learned jurist Dennis Dominic Adjei spelt out the intricacies of same in his scholar book, Criminal Procedure and Practice in Ghana Volume 1 at page 469, he wrote;

"…There is one main ground under which an appeal may succeed, that is where the Appellant proves that there is a substantial miscarriage of justice. There are three separate grounds of Appeal which constitute substantial miscarriage of justice and a successful proof of any one of them may allow the appeal. The first ground is where the appellate court considers that the verdict or conviction or acquittal ought to be set aside on grounds that it is unreasonable or cannot be supported having regard to the evidence. The second ground is where the court considers that the judgement was decided on wrong question of law or fact. The last ground is where the court finds that there was a miscarriage of justice. Any other ground of appeal outside the three grounds discussed above shall fail. The Court shall dismiss any appeal on procedural error or defect or technically unless it has occasioned substantial miscarriage of justice…".

APPLICABLE PRINCIPLES ON APPEALS AGAINST SENTENCE

When a Court of law is called upon to decide on the merits of an Appeal against sentence, it is of paramount importance that the Appellate Court considers some general sentencing principles.

These principles relate to the factors to be considered when a trial court seeks to impose a sentence.
Azu-Crabbe' JA (as he then was) had the following to say about the principles in **Kwashie v. The Republic (1971) 1 GLR, 488 CA**:

> **" … 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 …"**

On the same topic, Baidoo JA (as he then was) stated 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 …"**

On a more recent note, Ansah JSC stated the following 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 …".**

The above are the principles that would be taken into account in the instant Appeal.

Both the Counsel the appellant and the state attorney representing the republic duty filed written submissions. Upon careful reading of the appellants' submissions, same contain, amongst others, the following points.

(a) The prosecution had the duty to prove the case beyond reasonable doubt
(b) It was the duty of the trial court to explain the legal implications of the decisions taken by the appellant.
(c) A plea of guilty should not necessary lead to conviction and sentence.
(d) Some mitigating factors were not taken into consideration by the trail judge.
(e) The sentence imposed by the trial court was mistakenly harsh and excessive.
(f) The conviction of the appellant was wrong in law and unwarranted.

The following cases were cited by the appellant:

1) Woolmington v. Director of Public Prosecutions (1935) AC, 463.
2) Republic vs. Selormey (2001-2002) 2GLR,424
3) Haruna vs. The republic(1980)

The written submission filled by the Republic included, amongst others, the following arguments.

(a) The appellant confessed to the commission of the offence in his caution statement to the police.
(b) The appellant pleaded guilty in court.
(c) The constitutional prerequisites for a fair trial were observed by the trail judge.
(d) Admittedly some mitigating factors were not taken into account by the trial judge but the court also considered the prevalence of stealing in the locality.
(e) Sentencing in criminal is at the discretion of the trial judge.

(f) The conviction and sentence did not occasion a miscarriage of justice.

The following authorities were relied by the Republic.

(1) Apaloo and others vs. The Republic (1975) GLR, 156.
(2) Banda vs. The Republic (1975)1GLR, 52.
(3) Kwashie vs. The republic (1971)1GLR, 488

As stated ut Supra, this Appeal would be dealt with by way of rehearing.

Accordingly, I will consider the record placed before the trial court and evaluate and assess same.

Given the nature of the instant Appeal, I deem it totally incumbent upon myself to give an elaboration of the applicable law governing the taking of the plea of an accused person.

The relevant and applicable legal provisions that deals with the instant subject can be found in Sections 171 and 199 of the Criminal and other Offences (Procedure) Act – Act 30/1960.

Section 171 of Act 30 relates to summary trials while Section 199 of Act 30 deals with trials on indictment.

The instant Appeal relates to a summary trial that took part in a Circuit Court as a result, the applicable provision is Section 171 of Act 30.
Section 171 of Act 30 provides as follows:

"171(1):- where an accused appears personally or by counsel as provided under Section 79, the substance of the charge contained in the charge sheet or complaint shall be stated and explained to the accused or if the accused is not personally present, to the counsel of the accused, and the accused or counsel shall be asked to plead guilty or not guilty.

171(2):- In stating the substance of the charge, the court shall state particulars of the date, time and place of the commission of the alleged offence, the person against whom or the thing in

respect of which it is alleged to have been committed, and the section of the enactment creating the offence.

171(3):- A plea of guilty shall be recorded as nearly as possible in the words used, or if there is an admission of guilt by letter under Section 170(1), the letter shall be placed on the record and the court shall convict the accused person and pass sentence or make an order against the accused, unless there appears to it sufficient cause to the contrary."

Upon consideration of the above provisions, I believe the following are the procedures that need to be adhered to by a trial court when it comes to taking the plea of an accused person in a summary trial.

(1) The charge as contained on the charge sheet must be read to the Accused person in a language that he understands.
(2) The Accused person must be asked whether he pleads guilty or not guilty to the offence.
(3) If the Accused person pleads not guilty, the trial Judge must record the plea of the Accused and proceed to record the facts of the case and thereafter try the Accused for the offence on the charge sheet.
(4) If the Accused pleads guilty, the plea must be recorded. Thereafter the facts of the case must be recorded. The Accused should be convicted on his own plea, the trial Judge must hear plea in mitigation and finally impose the appropriate sentence.
(5) If the Accused makes any comments after pleading guilty, the comments must be recorded.
(6) If the comments constitute a defence to the offence under consideration, the trial court is enjoined to enter a plea of not guilty on behalf of the Accused. The Judge must then record the facts of the case and proceed to try the Accused.
(7) If the comments do not constitute a defence to the offence at play, the plea of guilty must stand undisturbed.

Relating the instant applicable provisions to the instant appeal, some facts are incontrovertible.

On the face of the proceedings at the trial court, it is clear that the appellant pleaded guilty simpliciter.

The plea was duly recorded.

The trial judge then proceeded to convict the appellant on his own plea of guilty. This was also recorded.

Next, the trial judge gave the appellant the opportunity of a plea in mitigation.

The appellant duly addressed the court. This was also recorded.

The trial judge then stated that he has taken the plea of mitigation in account.

He also added that he would take into account the prevalence of stealing within the reality.

The above were also recorded. It was after the above steps were taken that the trial court pronounced the sentence on the appellant.

Indeed the trial judge was unequivocal about the fact that the court was imposing a deterrent sentence.

Taking into account the aforestated, I fail to see how the trial judge could be accused of not acting within the confines of the law.

I simply cannot see any errors of the law committed by the trial court.

With regards to sentencing, I am not in agreement with the appellant that the Sentence was harsh and excessive. As stated at supra, the trial judge took into account the rate of stealing in the

court's jurisdiction. Clearly, this is one of the factors that would entitle a trial court to impose a deterrent sentence.

-See Kwashie vs. the Republic (1971) 1 GLR, 488.

Additionally, I note that the maximum sentence for the offence of stealing is 25 years in prison. The trial judge therefore imposed a sentence which was allowed in law.

-See Section 124(1) at Act 29/1960(as amended)
-See Also section296 (5) at Act 30/1960(as amendment)

The decision I have reached with the regards to the appeal against sentence is fortified and emboldened where I take cognizance of one fundamental and applicable legal proposition.

That is the fact that on appellate cannot vary a sentence imposed purely by virtue at the fact that it would have imposed a different sentence.

For the appellant court to interfere, there must be an error at law. The dicta of two (2) distinguished jurists is directly in point.

The respected Osei-Hwere J (as he then was) stated as follows in **Banda vs. The Republic (1975) 1GLR, 52**

> **"…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 his part, the esteemed jurist Lord Hewart CJ, stated as follows in the case of **Gumbs(1926)19 Crim. App.R,74**

> **"…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…"

As stated ut supra, the main grand upon which an appeal may be allowed is that there has been a substantial miscarriage of justice.

What constitute miscarriage of justice?

The Supreme Court provided the following answers in the case of **Adu vs. Ahamah (2007-2008) SCGLR, 143.** It stated thus;

"…That miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be neglect of some principle of law or procedure, whose application will have the same effect.."

Relating the above dictum to the instant Appeal, this court is not convinced that the trial judge committed any errors at law in respect of both the conviction and sentence of the Appellant.

To this effect, no miscarriage of justice has been occasioned.

On the contrary, she acted within the confines of the law with respect to both conviction and sentence.

CONCLUSION

Taking into account the aforementioned, this Appellate court is not convinced that any of the ground of Appeal has merit.

Accordingly, the instant Appeal against conviction and sentence fails and same is hereby dismissed.

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* **Mohadeen Osuman Esq.,for the Appellant.**
*** State Attorney absent.**

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