**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA AD 2016**

**CORAM: ANIN YEBOAH, JSC (PRESIDING)**

**BAFFOE BONNI, JSC**

**BENIN, JSC**

**AKAMBA, JSC**

**APPAU, JSC**

**CRIMINAL APPEAL**

**NO.J3/9/2013**

**20TH JANUARY 2016**

**HENRY KWAKU OWUSU … APPELLANT**

**VRS.**

**THE REPUBLIC … RESPONDENT**

# JUDGMENT

**APPAU, JSC**:

Section 1 (1) of the Narcotic Drugs (Control, Enforcement and Sanctions) Act, 1990 [P.N.D.C.L. 236] provides:***"A person who imports or exports a narcotic drug without a licence issued by the Minister responsible for Health for that purpose commits an offence and on conviction is liable to a term of imprisonment of not less than ten years".***

Article 14 (6) of the 1992 Constitution of the 4thRepublic of Ghana also provides:***"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment".***

On the 26th day of November 2008, the appellant herein, Henry KwakuOwusu, was tried and convicted by the Greater Accra Regional Tribunal on two counts of exportation of narcotic drugs without lawful authority contrary to section 1 (1) of the Narcotic Drugs (Control, Enforcement and Sanctions) Law, P.N.D.C. Law 236 of 1990. He was consequently sentenced to a prison term of fourteen (14) years with hard labour on each of the two counts to run concurrently.

Before his conviction, he had served a period of three (3) years four (4) months in lawful custody as he was never granted bail upon his arrest on 24th July 2005 up to the completion of the trial. Meanwhile, the trial Tribunal did not expressly state in its judgment of 26th November 2008 that it did take into account the period of three years four months that he had been in custody in deciding on the fourteen year jail term, as provided under Article 14 (6) of the 1992 Constitution referred to above.This failure by the trial tribunal to explicitly state that it did take into consideration this period of prior incarceration before deciding on the 14 year jail sentence and the silence of the Court of Appeal on same when it dismissed the appellant's appeal before it, is the crux of the appeal before us.

**FACTS**

The facts of the case as presented by the Prosecution to the Greater Accra Regional Tribunal were that: The Narcotics Control Board of Ghana received

information from Her Majesty's Customs in the United Kingdom that they had intercepted certain narcotic drugs concealed in some food items exported from Ghana. Among the drugs intercepted were 63 kilograms of Indian hemp (Cannabis) and 2.8 kilograms of cocaine and several others.

The report explained that on 9th May 2005, a container DVRU4083109 with seal No. AX803079, containing cocaine concealed in paper cartons used to export food items, was intercepted at Felixtowe Seaport in London. Again, on 20th July 2005, another 144 boxes of fresh vegetables airlifted from Kotoka International Airport by ALITALIA Air to Heathrow Airport with Airway Bill No. 005-5551671491, was also found with cannabis concealed in the paper cartons used to export the items. Her Majesty's Customs, U.K. therefore requested for investigations to be conducted into the matter by the Ghanaian authorities.

Investigations led to the arrest of the Shipping agent who shipped the items in which the drugs were concealed. He was called Emmanuel Adjavor (alias) J. K. Upon his arrest, he admitted shipping those items but claimed he did so for and on behalf of the actual exporter by name Henry KwakuOwusu, the appellant herein.He therefore led the police to arrest the appellant on 24th July 2005. After investigations, the appellant was charged with the offences under the two counts before the Greater Accra Regional Tribunal on 13th December 2006. He was tried, convicted and sentenced accordingly on 26th November 2008.

**APPEAL BEFORE THE COURT OF APPEAL**

The appellant was not satisfied with his conviction and sentence by the Greater Accra Regional Tribunal so he filed a Notice of Appeal against same at the Court of Appeal. The grounds of appeal he canvassed before the Court of Appeal were five. They were:

i. **The judgment cannot be supported having regard to the evidence adduced at the trial.**
ii. **The Greater Accra Regional Tribunal erred whenit admitted into evidence some documents tendered by the prosecution.**
iii. **The evidence relied upon by the Greater Accra Regional Tribunal to convict appellant was clearly inadmissible.**

iv. **The Regional Tribunal erred when it held that the appellant did not adduce evidence to indicate which address Emmanuel Adjavor (J.K.) used in exporting the goods.**

v. **The judgment of the Regional Tribunal is unreasonable thereby resulting in a miscarriage of justice to the accused/appellant.**

The Court of Appeal dismissed the appellant's appeal against both conviction and sentence on the 12th day of May 2010 and affirmed the judgment of the trial Tribunal.

On the appeal against conviction, this was what the Court of Appeal said *inter alia* in its judgment delivered by Gyaesayor, J.A.: *"In the instant case, the trial court found the appellant was not a credible witness having regard to his testimony in court and the statement he made to the police. The trial court listened to P.W.1 the police investigator and found that his evidence was pivotal to the resolution of the case and also found that appellant did not cause the items to be exported for one Ras and concluded that the appellant was the owner of the items in which the prohibited drugs were found. There is no basis for this court to tamper with the finding of fact made by the trial court.*

*Clearly then, the tribunal found sufficient evidence requiring no corroboration to satisfy the conviction of the appellant and it rightly did so. This main ground of appeal that the judgment is against the weight of evidence fails…"*

With regard to the appeal against sentence, the appellate court stated as follows at page 16 to 17 of its judgment, which appears at pages 375 and 376 of the record of appeal (ROA):

*"Appellant also appealed against the sentence on the grounds that it is harsh. The minimum sentence is ten (10) years IHL and the court was fully aware of this before it passed sentence. See P. Crentsil v Crentsil [1962] 2 GLR 171 where the court referring to Blunt v Blunt [1943] AC 517, quoted with approval the dictum of Viscount Simon, L.C. ;* ***'An appeal against the exercise of the court's discretion can only succeed on the ground that the discretion was exercised on wrong or inadequate materials or it can be shown that the court acted under a misapprehension of fact, in that it either gave weight to irrelevant or unproved matters or omitted to take relevant matter into account'***

*The trial court took into account the fact that by his action, appellant sought to implicate an innocent person like Mr Nartey of Oko Ventures, the method by which the export was done and imposed the 14 years. To me, his discretion should not be disturbed and the sentence be made to stand. In conclusion, the appeal is dismissed".*

**APPELLANT'S APPEAL TO THIS COURT**

On 20th May 2010, the appellant invoked the appellate jurisdiction of this Court with the filing of a Notice of Criminal Appeal. The grounds of appeal were three and they were:

**(i) The dismissal by the Court of Appeal of appellant's appeal was unreasonable and occasioned appellant a substantial miscarriage of justice.**

**(ii) That the Court of Appeal failed to properly evaluate the evidence which formed the basis for the conviction of Appellant by the trial court.**

**(iii) That the Court of Appeal did not consider the objections raised by appellant as to the admissibility of documents tendered in evidence by the prosecution.**

When the appellant made his first appearance before this Court to pursue his appeal, his counsel sought leave of the Court to amend his Notice of Appeal filed on 20th May 2010 by the addition of a further ground of appeal. This Court graciously granted his prayer on 12th May 2015. The Appellant therefore, on the 27th day of May 2015, filed an amended Notice of Appeal in which he maintained the original grounds of appeal and added a fourth ground that read as follows;

**(iv) The sentence did not take effect from the date of offence.**

In his Statement of Case which he tagged as Written Submissions filed on the 11th of September 2015, the appellant intimated to this Court his intention to abandon the original grounds of appeal and to argue only the last ground which he filed pursuant to leave granted by this Court. This was what he said in paragraph 2; page 1 of his Statement of Case;

*"My Lords, it is proposed in this appeal to briefly recount the facts of this case. After stating the facts, we shall proceed to review briefly the evidence adduced by the prosecution at the trial to prove the facts recounted by the prosecution to the trial court as forming the basis for prosecuting appellant in demonstrating to this Honourable Court that the evidence could not have supported the charge. Be that as it may, we shall then proceed to argue the last ground of appeal which was added to our grounds of appeal per our amended notice of appeal filed on the 27th day of May 2015 with leave of this honourable Court Coram Georgina Theodora Wood, C.J., Ansah, Dotse, Anin-Yeboah and Benin, JJSC on the 12th day of May 2015. My Lords, this is because we intend to abandon all our other grounds of appeal, the reason being that the last ground of appeal renders moot all the previous others".* {Emphasis added}

**APPELLANTS SUBMISSIONS BEFORE THIS COURT ON HIS LAST GROUND OF APPEAL**

Notwithstanding the fact that counsel for the appellant said he would abandon the original grounds of appeal and argue the last of the grounds stated in his amended notice of appeal, he veered off course in his written submissions and wasted precious time on the abandoned grounds, hoping he could convince this Court that the conviction of the appellant by the trial tribunal was wrong. He, however, regained his consciousness and came on course with the following statement as a preface to his argument in support of the last ground:

*"My Lords, we may not want to bother you any further with comments on the evidence as same may at any rate, given our decision to abandon the other grounds of appeal, not be very material for the prosecution of the instant appeal. We shall proceed to look at the judgment of the court below and argue our sole ground of appeal under the circumstances".*

After the above preface, appellant began his arguments in support of his sole ground of appeal. Though the last ground of appeal, which Appellant called his sole ground of appeal as stated in the amended notice of appeal was that; **"The sentence did not take effect from the date of offence"**, the ground he intended to argue and which he actually argued in his written submission was;

**"The sentence did not take into account the time the appellant spent in lawful custody before his conviction"**.

We wish to emphasize that these two grounds of appeal re-called supra are not and cannot mean the same.The fact is that the law does not permit any judgment to take retrospective effect. Section 315 (2) of Act 30; i.e. Criminal and Other Offences (Procedure) Act, 1960 provides: ***"A sentence of imprisonment shall commence on and include the whole of the day on which it was pronounced"***. As a result, no sentence can take effect from the date of the offence or the date of arrest of the accused.

As Benin, J.A. (as he then was), now Benin JSC, stated in the case of **OJO v THE REPUBLIC [1999-2000] 1 GLR 169 @p. 172** -(**C.A**.), Section 315 (2) does not entitle a court to back-date a sentence. He then continued; *"Thus a court cannot impose a sentence today and say it should take effect from yesterday. Article 14 (6) of the Constitution only enjoins a court before sentencing a convicted person to take into account the period he has spent in lawful custody. So that if the court is mindful to impose six months and the convict has spent two months in lawful custody, the court has to impose four months to start from the date of conviction. The court is not entitled to impose six months and then say it should start from the date the convict was taken into lawful custody, i.e. two months back".*

The last ground of appeal as worded in appellant's amended notice of appeal filed on 27th May 2015 was therefore not appropriate since he could not have succeeded on such a ground. However, having properly re-worded the ground in his written submissions filed on 11th September 2015, this Court shall overlook that error and take it that same has been amended; bearing in mind that it is the substance of the arguments proffered that matters but not the form in which the ground was formulated. Modern notions of justice require that a court should do substantial justice between the parties in litigation unhampered by technical procedural rules. The courts are therefore generally less concerned about defects in form than defects in substance. See the dictum of Apaloo, J.A. (as he then was) in **ABDILMASIH v AMARH [1972] 2 GLR 414 @ 429;** also **IN RE ASERE STOOL; NIKOIOLAIAMONTIA IV (Substituted by TAFOAMONI II) v AKOTIAOWORSIKA III (Substituted by LARYEAAYIKU III [2005-2006] SCGLR 637 @ 654-656.**

Arguing in support of the sole ground that the sentence did not take into account the time the Appellant spent in lawful custody before his conviction, counsel for the Appellant contended that a trial court has no discretion whatsoever in complying with the constitutional provision which requires that in passing sentence on a convicted person, a court is bound to take into account the time the convict had been in lawful custody pending his/her trial.Counsel referred to the Court of Appeal case of **OJO v THE REPUBLIC** referred to supra and the decisions of this Court in **BOSSO v THE REPUBLIC [2009] SCGLR 420** per Wood, C.J.and**FRIMPONG 'alias' IBOMAN v THE REPUBLIC [2012] 1 SCGLR 297**per Dotse, JSC, in support of his arguments.

According to the appellant, notwithstanding the fact that the appellant had been in continuous lawful custody from 24th July 2005 till his sentence on 26th November 2008, the Regional Tribunal in sentencing him to a prison term of fourteen (14) years IHL, did not comply with the decisions of this Court in the *Bosso* and *Iboman cases*. Again, the Court of Appeal was silent on this constitutional provision when the matter went before it on appeal. Counsel therefore prayed this Court to revisit appellant's sentence of 14 years by taking into account the period he had been in custody before the sentence was imposed on him. He was of the view that the number of years appellant has already served in custody is enough to order for his immediate release.

**RESPONSE BY THE LEARNED STATE ATTORNEY FOR THE REPUBLIC**

The learned Chief State Attorney in her written response to that of counsel for the appellant on his appeal against sentence, conceded that both the trial tribunal and the Court of Appeal erred when they failed to abide or comply with article 14 (6) of the 1992 Constitution. She agreed that the trial tribunal should have expressly stated in its judgment that it did take into consideration the period the appellant had been in custody as laid down by the authorities at the time it was passing sentence on him. However, as to whether the appellant must be released in view of the fact that he would have served a statutory period of fifteen (15) years by July 2015, she would not comment on same but would leave it to the discretion of this honourable Court.

**DETERMINATION OF THE MERITS OF THE APPEAL**

The authorities are legion that an appeal; be it a criminal appeal or a civil appeal, is by way of re-hearing. See the cases of: TUAKWA v BOSOM [2001-2002] SCGLR 61; BROWN v QUASHIGAH [2003-2004] SCGLR 930; SARKODIE v FKA CO. LTD [2009] SCGLR 65; ACKAH v PERGAH TRANSPORT LTD & Others [2010] SCGLR 728; APALOO v THE REPUBLIC [1975] I GLR 156@ 169; DEXTER JOHNSON v THE REPUBLIC [2011] 2 SCGLR 601 @ 669; FRIMPONG @ IBOMAN v THE REPUBLIC (cited supra); etc.

What this statement means in the context of a criminal appeal is well stated by my respected brother Dotse, JSC in the *Dexter Johnson case* cited supra at page 669-670:*"What is therefore meant by an appeal being by way of a re-hearing is that the appellate court has the powers to either maintain the conviction and sentence, or set it aside and acquit and discharge, or increase the sentence. If the above contention is correct, which I think is, then I am of the considered view that it behoves on this Court to consider in its entirety the appeal record before it and substitute itself as the trial court and the Court of Appeal…"*

The prayer of the appellant in this appeal is that both the trial tribunal and the Court of Appeal did not advert their minds to the constitutional provision that required the trial court to take into account the number of years he had been in lawful custody prior to his sentence.The law under which he was charged; i.e. section 1 (1) of P. N. D. C. Law 236 prescribes the minimum penalty for persons convicted under that offence but prescribes no maximum. That is left at large subject to the discretion of the trial court. It was in the exercise of that discretion that the trial tribunal settled on the fourteen (14) years, which the appellant, in his second appeal to this Court after his first appeal to the Court of Appeal had eluded him, has called into question subject to the failure of the two lower courts to comply with the provisions under article 14 (6) of the 1992 Constitution. This provision has been quoted in extenso supra and we repeat same here;

***"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment".***

The contention of the appellant is that he was in lawful custody for a period of three (3) years, four (4) months prior to his incarceration for another fourteen (14) years; meaning he has been sentenced to a total of seventeen (17) years, four (4) months but not fourteen (14) years as recorded. He therefore wants the intervention of this Court as a result of this constitutional aberration committed by both the trial court and the Court of Appeal.

What are the principles upon which this Court acts on an appeal against sentence? The answer lies in the dictum of Azu Crabbe, C.J. in the case of **APALOO& Others v THE REPUBLIC [1975] 1 GLR 156 @ 190-191 – C.A**. He wrote; *"The principles upon which this court acts on an appeal against sentence are well-settled. It does not interfere with sentence on the mere ground that if members of the court had been trying the appellant they might have passed a somewhat different sentence. The court will interfere with a sentence only when it is of the opinion either that the sentence is manifestly excessive, having regard to all the circumstances of the case, or that the sentence is wrong in principle".*

Though the above decision was that of the Ordinary Bench of the Court of Appeal, which was the highest court of the land at the time by virtue of the Courts (Amendment) Decree, 1972 [NRCD 101], which replaced the Supreme Court established by the 1969 Constitution with the Full Bench of the Court of Appeal, it is of persuasive force as it espoused the correct position of the law.

In that case; i.e. the *Apaloo case*, the first appellant bought a printing machine and employed certain persons including someone who was well-known for his criminal record in relation to forged currency notes, to use it in printing forged currency notes for him at a secret place in a certain village. When he apprehended danger of being found out, the first appellant caused the removal of the printing machine to his offices in Accra where it was installed in a room and the printing of the currency continued. On a further apprehension of being implicated, the first appellant caused his driver to take away from his offices, some cartons which were later found to contain inter alia 21 sensitized aluminium plates for printing currency notes. When the offices of the first appellant were being searched by the military police, the first appellant told various lies about the printing machine.

The first appellant was therefore charged with five offences under the Currency Act, 1964 [Act 242], including possession of implements for making notes contrary to section 19 (a) (ii) and abetment of forgery contrary to section 32 of the Act. The other five appellants, who wilfully and knowingly participated in the criminal currency business promoted by the first appellant, were also charged on separate counts with offences under the Act. All the appellants were found guilty and convicted accordingly.

The first appellant was sentenced to fifteen (15) years imprisonment with hard labour while the others received various terms lower than that of the first appellant. The first appellant appealed against both the conviction and sentence while the others appealed against sentence only. While the first appellant's appeal against conviction failed, his appeal and that of the others against sentence succeeded in part. The first appellant's appeal against the sentence of fifteen (15) years was based on the sole ground that it was excessive.

One of the submissions made by counsel for the first appellant for the consideration of the then Court of Appeal, which was then the apex court of the land, was his ripe age. He was fifty-four (54) years at the time. Incidentally, the three counts upon which the first appellant was slapped with the concurrent sentences of fifteen (15) years IHL under the Currency Act [Act 242] carried a maximum sentence of life imprisonment.

The court, per Azu Crabbe, C.J. in determining the excessiveness or otherwise of the sentence of 15 years IHL, referred to the notorious case of **KWASHIE v THE REPUBLIC [1971] 1 GLR 488** (**C. A.**) on the factors which a trial court or judge is entitled to consider in determining the length of sentence, which we do not want to repeat here because of their notoriety.

The court then stated as follows: *"One of the objects of the Currency Act, 1964 [Act 242], of Ghana was to prohibit acts tending to depreciate the currency of the country and harmful to the general economy. The conduct of the appellants, it seems to this court, was very serious, because by putting the false currencies in circulation they were helping to undermine the confidence of the country's currency in the present circumstances, when the economy is slowly but gradually recovering from the damage of past years. Offences of this*

*gravity usually call for deterrent sentences which would teach others like the appellants that crimes of this sort would not be tolerated and would be severely punished. But the general principle is that a sentence of imprisonment, even though intended specifically as a general deterrence, must not be excessive in relation to the facts of the offence. This court thinks after a most anxious consideration of the age of the first appellant and all the circumstances of this case, that the sentences of fifteen years on each of the counts (1), (4) and (5) are inordinately excessive and ought to be reduced and accordingly a sentence of ten years' imprisonment with hard labour on each of these counts is accordingly substituted to run from the date of the original sentences. To that extent the appeal by the first appellant against sentence is allowed".*

I have quoted extensively the above decision of the then apex court of the land to drum home the factors the courts consider in determining deterrent sentences vis-à-vis other determinants that are factored in the imposition of punishments.

Though the crimes committed by the first appellant and the others in the above case are not the same as that of the appellant before us, the height or level of seriousness society attaches to both crimes; (i.e. currency counterfeiting and drug dealings) could be matched as being at par. Even looking at the punishments prescribed by law for the two separate offences, it appeared the former carried a heavier penalty than the latter; the maximum being life imprisonment which the latter cannot attract.

While the law in question; (i.e. P. N. D. C. Law 236) of 1990 prescribes a minimum sentence of ten (10) years, the maximum that could be imposed by a trial court is at large though devoid of life imprisonment. This means that taking into consideration the way or manner, or the modus operandi of the accused in the commission of the crime in question, a court can decide to effect a punishment double or triple the minimum prescribed by law even in a situation where the accused had spent some time in lawful custody before the completion of the trial. A trial court that imposes such a sentence would be justified in doing so where the court makes manifest in its judgment the fact of it having taken into account the number of years already spent in custody prior to the sentencing.

A careful reading of the judgment of the trial tribunal that was delivered on 26th November 2008 suggests that in sentencing the appellant to fourteen (14) years IHL on each of the two counts to run concurrently, the trial tribunal did not advert its mind to the fact that the appellant had been in continuous lawful custody since his arrest on 24th July 2005. This covered a period of three (3) years, four (4) months prior to the imposition of the 14-year jail sentence on him on each of the two counts.The Court of Appeal that determined the first appeal also committed the same error.

It is needless to point out that if the trial tribunal was minded in sentencing the appellant to more than the fourteen (14) years it had settled on, it would have made it very clear in its judgment that notwithstanding the over three years spent in lawful custody, it had still decided to give him fourteen (14) more years to serve as a deterrence to other like-minded persons. Wood, C.J. was very clear on this point when, in her elaboration on article 14 (6) of the 1992 Constitution in the *Bosso case* supra, she delivered herself as follows:

*"This clear constitutional provision enjoins judges, when passing sentence, to takeany period spent in lawful custody before the conclusion of the trial into account. A legitimate question which might arise in any given case and which does in deed arise for consideration in this appeal, is how do we arrive at the conclusion that this constitutional mandate has been complied with? We believe this is discernible from the record of appeal. We would not attempt to lay down any hard and fast rules as to the form, manner or language in which the compliance should be stated, but the fact of compliance must be either explicitly or implicitly be clear on the face of the record of appeal. Admittedly, the more explicitly the court expresses the position that it has taken into account the said period, the better it is for everyone as it places the question beyond every controversy and leaves no room for doubt. Nonetheless, we think that any reference to the period spent in custody before the conclusion of the trial in a manner that suggests that it weighed on the judges' mind before deciding on the sentence should be sufficient".*

If the trial tribunal had done that with an affirmation by the Court of Appeal, this Court would be slow in interfering withthe exercise of the lower courts' discretion for, as Azu Crabbe C.J. rightly opined in the Apaloo case; an appellate court does not interfere with a sentence on the mere ground that if

members of the court had been trying the appellant, they might have passed a somewhat different sentence.

So as things stand now, there is no question to the fact that the sentence the trial tribunal intended to impose on the appellant, after evaluating the evidence before it, was fourteen (14) years IHL; nothing more, nothing less. If the trial tribunal had taken account of the fact that the appellant had spent more than three years in lawful custody at the time it was imposing that sentence; a requirement that the Constitution of the Republic mandates our courts to consider, it would have deducted that from the number of years it had settled on before announcing the sentence. Having failed to do so as expressly directed by this Court in the *Bosso* and *Iboman cases* cited supra, both the trial tribunal and the Court of Appeal grievously erred in their respective decisions.

From the records before us, the appellant was forty-seven (47) years old at the time he was arrested on 24th July 2005. He has since been in continuous custody, which covers a period of ten (10) years, six (6) months by our calculations. This means that appellant is over fifty-seven (57) years as at now. This places him in an older age than the first appellant in the Apaloo case who was 54 then, which age the then apex court considered as ripe compelling it to reduce his sentence from fifteen (15) years to ten (10) years.

In our view, ten (10) years and six (6) months in continuous prison confinement in our prisons, which are notorious for their very deplorable conditions, is enough punishment for the appellant for the offences he was said to have committed.

Psalm 90 verse 10 of the Holy Book teaches us that: ***"The days of our lives are seventy years; and if by reason of strength they are eighty years, yet their boast is only labour and sorrow; for it is soon cut off and we fly away".***

If our years on earth are seventy (i.e. three scores and ten) and any extra is labour and sorrow, then at fifty-seven (57), the appellant is left with a decade and three (i.e. 13) years out of his labour/sorrow free years on earth; going by this Biblical teaching. We therefore hold the view that appellant has suffered enough in confinement for his pole-vaulting attempt to increasing his finances

through illegal means, instead of embarking on a legal path to achieving the same purpose.

We shall therefore interfere with the sentence of fourteen (14) years IHL on each of the two counts passed by the trial tribunal and affirmed by the Court of Appeal, and in its place substitute it with a concurrent sentence of ten (10) years IHL on each of the two counts to run from the date of the original sentences.

We do so, taking into account the three years four months already spent in lawful custody before the imposition of the fourteen (14) year jail term, which the two lower courts appeared to have glossed over by their failure to expressly indicate their compliance as advised by this Court in the two cases of *BOSSO v THE REPUBLIC* and *FRIMPONG 'alias' IBOMAN v THE REPUBLIC* cited supra. This is his constitutional right as expressed by this Court in its recent unreported judgment per Adinyira (Mrs), JSC, dated 2nd December 2015 in the case of **FRIMPONG BADU v THE REPUBLIC**; Criminal Appeal No. J3/11/2015.

We shall take this opportunity to repeat our admonition to all trial courts to spare appellate courts the headache of having to interfere in the legitimate exercise of their discretion in the passing or imposition of sentences on convicted criminals by complying strictly with the provisions of Article 14 (6) of the 1992 Constitution as expressly stated by this Court in the three cases cited supra.

Appeal against sentence is accordingly upheld.

**YAW APPAU**

**JUSTICE OF THE SUPREME COURT**

**ANIN YEBOAH**

**JUSTICE OF THE SUPREME COURT**

**P. BAFFOE BONNIE**

**JUSTICE OF THE SUPREME COURT**

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