

GHANA / JUDGMENT

OWUSU VRS. REPUBLIC (CR/0224/2024) [2024] GHAHC 274 (23 May 2024)

COURT
ghahcDECIDED
23 May 2024

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF JUSTICE HELD IN ACCRA ON THURSDAY THE 23RD DAY OF MAY 2024 BEFORE HER LADYSHIP JUSTICE MARY M.E YANZUH, JUSTICE OF THE SUPERIOR COURT OF JUDICATURE SUIT NO: CR/0224/2024 JOSEPH OWUSU CONVICT/APPELLANT VRS THE REPUBLIC RESPONDENT/RESPONDENT

JUDGMENT

The Appellant herein was arraigned before the Duayaw Nkwanta Circuit Court on the 13th of July 2012 on a count of conspiracy to commit the offence of defrauding by false pretences and a second count of defrauding by false pretences contrary to Sections 23(1) and 131 of the Criminal Offences Act 1960 Act 29. The accused person pleaded guilty with explanation to both counts after the charges were read and explained to him. The court heard his explanation on both counts and found that his explanation on the count of defrauding by false pretences count two, amounts to guilt and proceeded to acquit and discharge the appellant on the first count of conspiracy because “by his own admission accused is acquitted and discharge on count one as one person is incapable of conspiring.” The court therefore convicted him on his own plea and sentenced him to a prison term of five (5) years IHL in respect of count two. It is against this sentence that 1 the appellant filed the instant appeal on the 18th of March 2024 and amended the petition of appeal on the 24th of April 2024. The grounds of appeal in the instant appeal are as follows: i. That an earlier offence which was similar in character which the appellant was convicted on 16th of August 2012 was not factored in the trial of the second offence which the appellant was convicted on the 28th of September 2012. ii. That although section 301 of Act 30 applied, the trial judge should have considered the lengthy sentence of the first offence and ordered for the second sentence to run concurrently in the interest of justice. That the convict pleaded guilty to both offence simpliciter and was also a first and young offender. That the first and second offences were similar in character and committed by the Appellant during the same period as per Section 109 of Act 30/90 That the convict has learnt his lesson and has shown remorse for both offences Additional grounds may be filed on receipt of the record of proceedings. iii. iv. v. vi. FACTS OF THE CASE According to the prosecution the complainant is a Senior Supply Officer at St John of God Hospital Duayaw-Nkwanta while the 1st accused/appellant is a trader based in Accra and the 2nd and 3rd accused persons are at large. The prosecution’s case is that during the month of June,

the complainant made a request through a friend on the Internet to buy a Toyota Corolla car. The appellant herein then contacted the complainant's friend through mobile phone and presented himself as a car dealer. The appellant went ahead and convinced the complainant that he has four of such cars in the harbor and would deliver it if the complainant gives him the money. 2 On 23/06/2012, accused persons came to the complainant and negotiated on the car and promised to deliver the car on 25th June, 2012. On 25/06/2012, the appellant a registered Toyota Corolla No. GS 4517-10 and stated that it is his wife's car and he and his wife decided to sell it to enable him clear his four cars at the port. The Complainant believed the appellant and paid for the car at the cost of GHC 8,000. The appellant again stated that he forgot to carry the documents on the car but would send it through the Accra Sunyani bound bus to be delivered to the complainant the following day. The prosecution's case is that as soon as the appellant left with the money, he changed his contact number and tracing him became futile. The prosecution added that the Complainant made another request for a similar car on the Internet again and 1st accused person responded and promised to deliver. This time the appellant changed his name and said he would bring a car to the complainant, collect the money and go to clear the car at the port and bring it to the complainant. Complainant planned a meeting place with the appellant and informed Police of the meeting date. The prosecution states that the Police ambushed the meeting place and when 1st accused arrived, he was arrested. In his caution statement, he admitted the offence and was charged before court. RESOLUTION OF THE GROUNDS OF APPEAL i. That an earlier offence which was similar in character which the appellant was convicted on 16th of August 2012 was not factored in the trial of the second offence which the appellant was convicted on the 28th of September 2012. ii. That although section 301 of Act 30 applied, the trial judge should have considered the lengthy sentence of the first offence and ordered for the second sentence to run concurrently in the interest of justice. iii. That the convict pleaded guilty to both offence simpliciter and was also a first and young offender. 3 iv. That the first and second offences were similar in character and committed by the Appellant during the same period as per Section 109 of Act 30/90 The above stated grounds of appeal would be dealt with together. According to the appellant, prior to him being convicted for the offence he is appealing, he had been convicted by the Mpraeso Circuit Court on the 16th of August 2012 for the offence of defrauding by false pretences. The proceedings of the Mpraeso Circuit court were attached to the record of appeal in the instant case. The Mpraeso Circuit Court sentenced him to twenty five (25) years IHL. The appellant is therefore contending that the Duayaw Nkwanta court which is subject of the instant appeal should have taken into account the fact that the offence was similar in character and should have therefore ordered for the sentence to run concurrently to each other. The fact that the appellant was convicted on the offence of defrauding by false pretences in both case is abundantly clear from both proceedings. Section 301 Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides that: "Where a person after conviction for a criminal offence is convicted of a different criminal offence, before sentence is passed on that person under the first conviction or before the expiration of that sentence, a sentence which is passed on that person under the subsequent conviction, shall be executed after the expiration of the first sentence, unless the Court directs that it shall be executed concurrently with the first sentence or a part of it." Justice Dennis Dominic Adjei in his book Criminal Procedure and Practice in Ghana, 2nd

Edition stated at page 401 as follows, “a person after conviction of a criminal offence and before sentence is passed, is convicted of a different criminal offence, shall be sentenced separately for both offences. The second sentence shall be served after the person has served the first conviction unless the court directs that it shall be served concurrently. Consecutive sentence is 4 passed where an accused is convicted for distinct offences. The sentences imposed on the accused in both convictions shall be fully served, that is; the convict after having served the first sentence imposed for the first conviction shall serve the sentence imposed on him or her for the subsequent conviction.” S. A Brobbey in his book *Practice and Procedure in the Trial Courts and Tribunals of Ghana* 2nd Edition at 215 writes that: “Any previous conviction of an accused may also be considered in imposing sentence: see Act 30, s 300 as amended by Act 653. As noted already, evidence of such conviction should not be led until the conclusion of the trial and after the conviction has been pronounced. Unless the accused admits the conviction, the prosecution must prove it: see *Akakpo v The Republic* (Practice Note)

[1974] 1 GLR 65 and *Commissioner of Police v Marboah* (Practice Note) [1962] 2 GLR 159, SC. A previous conviction to be taken into consideration in passing sentence is one in which the sentence imposed has been served, after which the accused has subsequently been convicted, but not where the accused is still serving the alleged previous conviction: see *Blackie v The State* (Practice Note) [1962] 2 GLR 219, SC. In *Amoah v The Republic* (supra) it was held that a previous conviction to be considered must be in relation to a similar offence unless the enactment states otherwise. In that case, the accused was convicted and fined ₵400 or two years' imprisonment with hard labour for a minor offence relating to property damage because he admitted one previous conviction for causing unlawful harm. On appeal, it was held that the previous conviction was not similar to the offence of causing damage. On the contrary, unlawful entry and stealing, for instance, have been held to be offences of the same or similar character: see *Blackie v The State* (Practice Note) (supra).” Applying the above to the instant case, it was not brought to the attention of the trial judge of the Duayaw Nkwanta Circuit court that the appellant at that time was serving any previous conviction for the offence of defrauding by false pretences. Even if same 5 was brought to his attention, Section 301 of Act 30/60 would not have been applicable and that is because the conviction on the 16th August, 2012 and that of the 28th September, 2012 are of similar character and as section 301 of Act 30 applies to different offences same would not apply to this particular case. Even if the section 301 of Act 30 was to apply, and same was brought to the attention of the trial judge, per the law, it was the discretion of the trial judge to decide if the sentences would run concurrently to each other or otherwise. Per the above also section 300 of Act 30/60 is not applicable. Section 109 of Act 30/60 on Joinder of charges has also been raised by the appellant. It provides that: “1) For each distinct offence of which a person is accused there shall, subject to subsection (2), be a separate charge or count.

- (2) Charges or counts for offences may be joined in the same complaint, charge sheet, or indictment and tried at the same time if the charges or counts are founded on the same facts, or form or are a part of a series of offences of the same or a similar character.” Justice Dennis Adjei in his book *supra* opined that it is irregular for a judge to consolidate cases pending before him or her involving the same accused person on same or similar facts. In this instance the cases emanated from different police stations one at Mpraeso and the instant one at Duayaw Nkwanta. Since the Mpraeso and Duayaw Nkwanta were different districts with different jurisdictions, the prosecution could not have joined the charges on one charge sheet as same were in different jurisdictions. Further to that, the Mpraeso and Duayaw Nkwanta Circuit courts have different geographical jurisdictions. Per the above, grounds i, ii and iv fails and same are dismissed. 6 GROUND III AND V: That the convict pleaded guilty to both offence simpliciter and was also a first and young offender and That the convict has learnt his lesson and has shown remorse for both offences From these grounds of appeal filed, the appellant is clearly seeking this court to mitigate the sentence imposed on him. Even though he prays the court to consider the lessons he has learned in custody and the fact that he has shown remorse, the law is clear that a ground of appeal which calls on the court to consider the lessons the appellant has learnt during his period of incarceration, this is nothing more than a plea to the court and cannot be considered as a ground of appeal. Even if the court were to consider that, same is nothing but mere assertions for which no evidence have to given to support them. The duty of the court in this judgment and any appeal against sentence is to consider the sentence meted out to the appellant to make a decision whether according to the law and statute, same ought to be disturbed. Section 131 of Act 29/60 provides that: “(1) A person who defrauds any other person by a false pretence commits a second degree felony. Section 296(5) of the Criminal Procedure Act 1960 Act 30 provides that: “A person convicted of a criminal offence under any of the following sections of the Criminal Offences Act, 1960 (Act 29), that is to say, sections 124, 128, 131, 138, 145, 151, 152, 154, 158, 165, 239, 252, 253, and 260 is liable to a term of imprisonment not exceeding twenty-five years.” From the aforequoted provisions of the law the trial judge had the discretion to impose a sentence not exceeding twenty-five years. The trial court having imposed a sentence of five years IHL was clearly within the confines of the law. 7 The question of sentence is a matter of discretion with all courts. Thus the decision of the court as to the length of sentence to impose from within the statutory limits is an exercise of the court’s discretion. Andoh J in *Komegbe and Others v The Republic* (1975) 2 GLR 170 referring to the statement of Lord Halsbury L.C. in *Sharp v Wakefield* (1891) A.C. 173 at 179 defined judicial discretion as: “ ... Discretion means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion ... according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself” Thus where a court has to exercise its discretion, same must not be arbitrary but fair. The constitution has provided a guide as to the exercise of that discretion. Article 296 of the 1992 Constitution enjoins that the discretionary power

shall be deemed to imply a duty to be fair and candid and shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law. In complying with due process of the law our courts always act upon the principle that the sentence imposed must be commensurate with the gravity of the offence. The appropriate sentence to be imposed should depend on the nature of the offence, the offender that is the convict and the entire circumstances of the case. In *Apaloo vrs The Republic* [1975] 1 GLR 156 at 190, the court stated that: “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”.⁸ The dictum of Taylor J (as he then was) in *Haruna vrs The Republic* [1980] GLR 189 at page 191 that: “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, 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 it was not done, then the discretion had not been properly exercised and an appellate court could interfere with the said exercise of discretion. If, however, all the circumstances relevant to the question of appropriate sentence have been adequately considered, the exercise of a discretion by a lower court ought not to be impugned by an appellate court”. Therefore even though a court is not bound to give reasons for the sentence it passes there are exceptions to this general rule such as where a statute requires that reasons should be given for the sentence, where the sentence is extremely high or quite close to the maximum limit and where the sentence is at the minimum or comes very close to the minimum limit and thus discloses exceptional leniency. See S. A Brobbey’s *Practice and Procedure in the Trial Courts and Tribunals of Ghana* 2nd Edition at page 209. From the record of appeal, the appellant was sentenced to 5 years IHL. The trial judge did not give any reasons for the sentence meted out. As per the appellant’s own admission, he had already on the 16th of August 2012 been sentenced by the Mpraeso Circuit court so clearly he was not a first time offender a fact which should have mitigated the sentence. However the fact that the appellant pleaded guilty simpliciter and did not take the court through a full trial should also have been a factor mitigating the sentence. There was no indication that any of that were taken into consideration. Further to that, there was no indication that the constitutional provision of taking into⁹ consideration any period the appellant had spent in custody before conviction and sentence was taken into account. Therefore in determining this appeal for reduction of the sentence, I have considered the entire circumstances of the case particularly the facts supporting the case, the fact that the appellant pleaded guilty simpliciter which saved the court time. I hereby set aside the sentence of five (5) years IHL and substitute a sentence of three (3) years IHL. The sentence is to take effect from the 28th September 2012 when the Appellant was sentenced. The appeal therefore succeeds in part. PARTIES: APPELLANT PRESENT COUNSEL: AGATHA ROCKSON FOR THE APPELLANT PRESENT SELASI KUWORNU FOR THE REPUBLIC/ RESPONDENT PRESENT MARY M.E YANZUH J. HIGH COURT JUDGE 10

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghahc/2024/274/eng@2024-05-23/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/sentencing-ghahc-2024>

Prepared on 29 October 2026 · Esheria