

UGANDA / JUDGMENT

Umar Sebidde v Uganda [2004]

UGSC 4 (14 January 2004)

[2004] UGSC 4

COURT

Supreme Court of Uganda

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New Roman Cyr;}{\f276\froman\fcharset161\fprq2 Times New Roman Greek;}
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New Tur;}{\f298\fmmodern\fcharset177\fprq1 Courier New (Hebrew);}
{\f299\fmmodern\fcharset178\fprq1 Courier New (Arabic);}

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\semihidden Default Paragraph Font;}{*

\ts11\tsrowd\trftsWidthB3\trpaddl108\trpaddr108\trpaddfl3\trpaddft3\trpaddfb3\trpaddfr3\trcbpat
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drv

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\semihidden Normal Table;}{\s15\ql \li0\ri0\nowidctlpar\faauto\rin0\lin0\itap0

\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext15 Style1;}
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\s17\ql \li0\ri0\nowidctlpar\faauto\rin0\lin0\itap0
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\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033

\sbasedon0 \snext18 Style4;}{\s19\ql \li0\ri0\nowidctlpar\faauto\rin0\lin0\itap0
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\s22\ql \li0\ri0\nowidctlpar\faauto\rin0\lin0\itap0
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\s26\ql \li0\ri0\nowidctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033

\sbasedon0 \snext26 Style12;}{\s27\ql \li0\ri0\nowidctlpar\faauto\rin0\lin0\itap0
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\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033

\sbasedon0 \snext31 Style17;}{\s32\qj \li0\ri0\sl-485\slmult0\nowidctlpar\faauto\rin0\lin0\itap0
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\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext34 Style20;}{
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\additive \b\fi\fs28 \sbasedon10 Font Style22;}{* \cs36 \additive \f0\fs24 \sbasedon10 Font Style23;}{
* \cs37 \additive \b\i\fs24 \sbasedon10 Font Style24;}{* \cs38 \additive \b\fs35\fs28 \sbasedon10
Font Style25;}{* \cs39 \additive \b\i\fs35\fs16

\sbasedon10 Font Style26;}{* \cs40 \additive \f37\fs26 \sbasedon10 Font Style27;}{* \cs41 \additive
\i\fs22 \sbasedon10 Font Style28;}{* \cs42 \additive \b\fs24 \sbasedon10 Font Style29;}{* \cs43
\additive \b\fs32 \sbasedon10 Font Style30;}{*

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\b\i\fs22 \sbasedon10 Font Style32;}{* \cs46 \additive \b\i\fs28\expnd4\expndtw20
\sbasedon10 Font Style33;}{* \cs47 \additive \b\fs26 \sbasedon10

Font Style34;}}{*cs48 \additive \b\f0\fs20 \sbasedon10 Font Style35;}}{*cs49 \additive \f2\fs28
\sbasedon10 Font Style36;}}{*cs50 \additive \b\f2\fs28 \sbasedon10 Font Style37;}}{\s51\ql
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\styrsid15955878 header;}}{\s52\ql \li0\ri0\nowidctlpar\tqc\tx4320\tqr\tx8640\faauto\rin0\lin0\itap0
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{*generator Microsoft Word 11.0.5604;}}{\info{\author owner}

\operator owner}}{\creatim\yr2008\mo2\dy26\hr12\min59}}{\revtim\yr2008\mo2\dy26\hr13\min7}
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\li557\ri557\widctlpar\faauto\rin557\lin557\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\field{*fldinst {

\cs35\b\f0\fs20\insrsid12927076\charrsid15955878 PAGE}}{\fldrslt
{\cs35\b\f0\fs20\lang1024\langfe1024\noproof\insrsid12927076 2}}}
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\par }}{*pnseclvl1\pnucrm\pnstart1\pnindent720\pnhang {\pntxta .}}
{*pnseclvl2\pnucltr\pnstart1\pnindent720\pnhang {\pntxta .}}
{*pnseclvl3\pndec\pnstart1\pnindent720\pnhang {\pntxta .}}
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{*\pnseclvl5\pndec\pnstart1\pnindent720\pnhang {\pntxtb ({\pntxta })}}
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\pnlcltr\pnstart1\pnindent720\pnhang {\pntxtb ({\pntxta })}}
{*\pnseclvl9\pnlcrm\pnstart1\pnindent720\pnhang {\pntxtb ({\pntxta })}}\pard\plain \s18\qj
\li0\ri0\sa96\widctlpar\faauto\rin0\lin0\itap0

\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
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\par }\pard\plain \s26\qc \li0\ri0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
\cs43\b\f0\fs28\insrsid12927076\charrsid15955878 THE REPUBLIC OF UGANDA

\par }\pard\plain \s27\qc \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
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\par }\pard \s27\qc \li0\ri0\sb202\widctlpar\faauto\rin0\lin0\itap0
\cs43\b\f0\fs28\insrsid12927076\charrsid15955878 IN THE SUPREME COURT OF UGANDA

\par }\pard\plain \s31\qc \li0\ri0\sb43\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
\cs43\b\f0\fs28\insrsid12927076\charrsid15955878 AT MENGO

\par }\pard\plain \s28\ql \fi-1598\li1598\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin1598\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
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\par }\pard \s28\ql \li0\ri0\sb178\sl-418\slmult0\widctlpar\faauto\rin0\lin0\itap0\pararsid15955878
\cs43\b\f0\insrsid12927076\charrsid15955878 [CORAM: ODER, TSEKOOKO, KAROKORA,
MULENGA AND KATO, JJ. S. C)

\par }\pard\plain \s30\ql \li590\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin590\itap0
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\cs44\b\f0\ul\expnd4\expndtw20\insrsid12927076\charrsid15955878 CRIMINAL APPEAL No.23
OF 2002

\par }\pard\plain \s31\qc \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
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 {\cs40\fo\insrsid12927076\charrsid15955878

Umar Sebidde, the appellant, was convicted of rape by Bamwine, J, in the High Court, and sentenced to imprisonment for 11 years. His appeal to the Court of Appeal was dismissed. He now appeals to this Court against that dismissal.

\par }\pard \s20\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
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 {\cs40\fo\insrsid12927076\charrsid15955878

Initially, the memorandum of appeal contained two grounds, the first of which was a complaint that the Justices of Appeal failed to evaluate the evidence on record and, as a result, they arrived at}{\cs40\fo\insrsid10375287 }{

\cs40\fo\insrsid12927076\charrsid15955878 a wrong}{\cs40\fo\insrsid15955878 }
 {\cs40\fo\insrsid12927076\charrsid15955878 d

ecision. Mr. Kafuko - Ntuyo, counsel for the appellant abandoned that ground. We have studied the record and considered the judgments of both the trial judge and the Court of Appeal. In our opinion, Mr. Kafuko -Ntuyo acted properly in abandoning that grou

nd because there was ample evidence against the appellant justifying his conviction and in our view the Court of Appeal had in fact re-evaluated the evidence.

\par }\pard \s20\ql \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
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\par }\pard \s20\ql \li0\ri0\sb101\widctlpar\faauto\rin0\lin0\itap0\pararsid10375287
 {\cs40\fo\insrsid12927076\charrsid15955878 The second ground, as amended with leave of the Court,}{\cs40\fo\insrsid10375287 }{\cs40\fo\insrsid12927076\charrsid15955878

states as follows:

\par }\pard\plain \s32\qj \li754\ri0\sb14\sl-485\slmult0\widctlpar\faauto\rin0\lin754\itap0
 \f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 The learned Justices }{

\cs46\b\i\f0\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}
{\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 Appeal misdirected
themselves on fact and in}{\cs46\b\i\f0\expnd4\expndtw20\insrsid15955878 }}

\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 law when they held that the
trial ju}{\cs46\b\i\f0\expnd4\expndtw20\insrsid15955878 dge acted on wrong principle in }
{\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878

sentencing the appellant.

\par }\pard\plain \s20\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
{\f0\insrsid12927076\charrsid15955878

\par }\pard \s20\qj \li0\ri0\sb226\sl-470\slmult0\widctlpar\faauto\rin0\lin0\itap0
{\cs40\f0\insrsid12927076\charrsid15955878 Under subsection (3) of section 6 of the Judicature
Statute, 1996, an appeal to this Court, against sentence or o

rder, is on a matter of law, but not on fact as stated in part of this ground. To that extent the
ground was poorly formulated and is misleading.

\par }\pard \s20\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
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\par }\pard \s20\qj \li0\ri0\sb230\sl-475\slmult0\widctlpar\faauto\rin0\lin0\itap0
{\cs40\f0\insrsid12927076\charrsid15955878 Be that as it may, Mr. Kafuko - Ntuyo, contended that
the Justices of Appeal wrongly interpreted the sentence

passed by the trial judge and thereby caused prejudice to the appellant by upholding the sentence
of 11 years which was imposed by the trial judge. Counsel relied on three of our decisions (see
post) made during this session whereby we modified the sente

nce in each case to

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\marglsxn1143\margrsxn1143\margtsxn1307\sbknone\linex0\colsx60\sectdefaultcl\sftnbj
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\par }\pard\plain \s20\qj \li0\ri0\sb67\sl-504\slmult0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
{\cs40\f0\insrsid12927076\charrsid15955878 reflect what in our opinion was the intention of the
trial judge.

\par }\pard \s20\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
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\par }\pard \s20\qj \li0\ri0\sb202\sl-475\slmult0\widctlpar\faauto\rin0\lin0\itap0
{\cs40\fo\insrsid12927076\charrsid15955878

Mr. Elubu, Principal State Attorney, opposed the appeal contending that the sentence passed by the Court of Appeal is not illegal and that that court only had corrected the vagueness created by the style of language in which the trial judge imposed the se

ntence. He distinguished this appeal from the three decisions cited by Mr. Kafuko -Ntuyo.

\par }\pard \s20\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
{\fo\insrsid12927076\charrsid15955878

\par

\par }\pard \s20\qj \li0\ri0\sb125\widctlpar\faauto\rin0\lin0\itap0\pararsid10375287
{\cs40\fo\insrsid12927076\charrsid15955878 When imposing the sentence the learned trial judge}
{\cs40\fo\insrsid10375287 }

\cs40\fo\insrsid12927076\charrsid15955878 expressed himself this way: -

\par }\pard\plain \s32\qj \li725\ri1003\sb24\sl-475\slmult0\widctlpar\faauto\rin1003\lin725\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
{\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878

"Doing the best I can, I deem sentence }
{\cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}
{\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 }
{\cs37\b\i\fo\insrsid12927076\charrsid15955878 11 }

\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 years imprisonment}
{\cs46\b\i\fo\expnd4\expndtw20\insrsid15955878 }
{\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 period on remand inclusive,
appropriate. I sentence him so"

\par }\pard\plain \s20\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
{\fo\insrsid12927076\charrsid15955878

\par }\pard \s20\qj \li0\ri0\sb230\sl-470\slmult0\widctlpar\faauto\rin0\lin0\itap0
{\cs40\fo\insrsid12927076\charrsid15955878 In the cases relied on by counsel for the appellant,
namely }{\cs47\b\fo\ul\insrsid12927076\charrsid15955878 Musisi. Z. Vs Uganda}{

\cs47\b\fo\insrsid12927076\charrsid15955878 }{\cs40\fo\insrsid12927076\charrsid15955878
(Criminal Appeal No.9 of 2002) }{\cs47\b\fo\ul\insrsid12927076\charrsid15955878 Akwam Vs.
Uganda}{\cs47\b\fo\insrsid12927076\charrsid15955878 }

\cs40\fo\insrsid12927076\charrsid15955878 (Criminal Appeal No.14 of 2002) and }
 {\cs47\b\fo\ul\insrsid12927076\charrsid15955878 Kizito Senkula Vs Uganda}
 {\cs47\b\fo\insrsid12927076\charrsid15955878 }{\cs40\fo\insrsid12927076\charrsid15955878
 (Crimina

l Appeal No.24 of 2001) , (all unreported) , we stated that this mode of sentencing is erroneous and ambiguous in that the trial court in effect sentenced the appellant for the period before the appellant was convicted. We do not think that Clause (8) of

Article 23 of the Constitution authorises Courts to impose sentences on accused persons for the period when such persons are still presumed innocent.

\par }\pard \s20\qj \li0\ri0\sb67\widctlpar\faauto\rin0\lin0\itap0
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 In}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}{

\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 Court}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}{

\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 Appeal,}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 an}{

\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 alternative}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 ground}{

\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 appeal

\par }\pard \s20\ql \li0\ri0\sb192\widctlpar\faauto\rin0\lin0\itap0
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 relating}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 to}{

\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentence}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 stated}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 that:}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 -

\par }\pard\plain \s32\ql
\li797\ri0\sb134\widctlpar\tlul\tx2424\faauto\rin0\lin797\itap0\pararsid15955878
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
{\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 "

.. the learned trial judge imposed a}{\cs46\b\i\f0\expnd4\expndtw20\insrsid15955878 }
{\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 sentence which }
{\cs46\b\i\f0\expnd14\expndtw70\insrsid12927076\charrsid15955878 is}{

\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 in the circumstances }
{\cs46\b\i\f0\expnd14\expndtw70\insrsid12927076\charrsid15955878 of }
{\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 the case excessive"

\par }\pard\plain \s20\qj \li0\ri0\sl-485\smult0\widctlpar\faauto\rin0\lin0\itap0\pararsid15955878
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 This}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 was}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 followed}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 by}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 a}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 prayer}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 that}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentence}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 be}
{\cs40\f0\expnd2\expndtw10\insrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 reduced.

\par }\pard \s20\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
{\f0\insrsid12927076\charrsid15955878

\par }\pard \s20\qj \li0\ri0\sb211\sl-475\slmult0\widctlpar\faauto\rin0\lin0\itap0
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 During}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 hearing}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 appeal}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 in}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 that}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Court,}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 although Mr.}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 S. N. Sserwanga,}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 counsel}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 for}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 appellant,}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 conceded that}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentence}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 11}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 years}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 was}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 not}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 illegal,}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 he contended}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 that}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentence}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 was}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 excessive}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 and}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 that}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 since the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 appellant}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 had}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 been}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 on}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 remand}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 for}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 3}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 years,}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the sentence}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 be}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 reduced}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 to}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 7}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 years.}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Ms.}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Betty}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Khisa,}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 a Principal}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 State}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Attorney,}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 opposed}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 this.}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 In}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 that}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 regard the}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 issue}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentence}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 was}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 canvassed}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 before}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Court}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of Appeal}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 and}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Court}{

\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 expressed}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 its}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 disapproval}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 the vague}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 manner}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 in}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 which}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentence}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 was}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 imposed,}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 observing that:}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 -

 \par }\pard\plain \s32\qj \li691\ri1147\sl-470\slmult0\widctlpar\faauto\rin1147\lin691\itap0
 \f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 "With respect to th
 e learned trial judge, we are unable to}{\cs46\b\i\fo\expnd4\expndtw20\insrsid15955878 }
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 appreciate that he could have
 intended to pass a sentence that}{

 \cs46\b\i\fo\expnd4\expndtw20\insrsid15955878 }
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 included the period the
 appellant spent on remand. Did he pass a}{\cs46\b\i\fo\expnd4\expndtw20\insrsid15955878 }}

{\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 sentence }
 {\cs46\b\i\f0\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}
 {\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 }
 {\cs37\b\i\f0\insrsid12927076\charrsid15955878

11 }{\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 years or }
 {\cs37\b\i\f0\insrsid12927076\charrsid15955878 11 }
 {\cs46\b\i\f0\expnd4\expndtw20\insrsid12927076\charrsid15955878 years minus the period spent
 on remand?"

\par }\pard\plain \s20\ql \li0\ri1555\sl-240\slmult0\widctlpar\faauto\rin1555\lin0\itap0
 \f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
 {\f0\insrsid12927076\charrsid15955878

\par

\par }\pard \s20\ql \li0\ri1555\sl-470\slmult0\widctlpar\faauto\rin1555\lin0\itap0
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 The}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Court}{

{\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 quoted}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Clause}{

{\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 (8)}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}{

{\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Art.}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 23}{

{\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the Constitution}{

{\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 which}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 reads:}{

\cs40\fo\insrsid12927076\charrsid15955878 }
\{cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 -

\par \sect }\sectd \marglsxn1134\margrsxn1132\margtsxn2402\sbknone\linex0\colsx60\sectdefault
cl\sectrsid15955878\sftnbj {\footerrl \pard\plain \ql \li0\ri0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {

\insrsid12927076

\par }}{\footerrl \pard\plain \ql \li0\ri0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\insrsid12927076

\par }}\pard\plain \ql \li0\ri0\sb617\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
\{f0\insrsid12927076\charrsid15955878

\par }\pard\plain \s29\qj \li754\ri1075\sb72\sl-475\slmult0\widctlpar\faauto\rin1075\lin754\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
\{cs47\b\fo\insrsid12927076\charrsid15955878 "Where a }}

\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 person }
\{cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 is}
\{cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 convicted and sentenced to a
term }}

\cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}
\{cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 imprisonment for an offence,
any period he or she spends in lawful custody in respect }}

\cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}
\{cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 the offence before the
completion }}{\cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}}

\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 his or her trial shall be taken
into account in imposing the term }
\{cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}}

\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 imprisonment"

\par }\pard\plain \s21\qj \li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
\f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
\{f0\insrsid12927076\charrsid15955878

\par

\par }\pard \s21\qj \li0\ri0\sb10\sl-475\slmult0\widctlpar\faauto\rin0\lin0\itap0
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Thereafter}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878
 the}{\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 court}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 observed,}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 correctly}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 in}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 our}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 view, that}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 it}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 is}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 duty}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 court}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 to}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 pass}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 a}

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 definite}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 and clearly}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 ascertainable}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentence.}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 The}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 learned}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Justices further}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 noted}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 that}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 at}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 time}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 trial}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 judge}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 sentenced the}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 appellant,}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}{

\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 latter}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 had}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 been}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 in}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 custody}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 for almost}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 three}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 years.}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 They}
 {\cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 concluded:}{

 \cs40\fo\insrsid12927076\charrsid15955878 }
 {\cs40\fo\expnd2\expndtw10\insrsid12927076\charrsid15955878 -

 \par }\pard\plain \s29\qj \li744\ri984\sl-240\slmult0\widctlpar\faauto\rin984\lin744\itap0
 \f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
 {\f0\insrsid12927076\charrsid15955878

 \par }\pard \s29\qj \li744\ri984\sb235\sl-470\slmult0\widctlpar\faauto\rin984\lin744\itap0
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 "Taking into account this
 period in custody, we find that a sentence }{

 \cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 of}
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 }
 {\cs37\b\i\fo\insrsid12927076\charrsid15955878 11 }
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878

 years imprisonment }{\cs46\b\i\fo\expnd14\expndtw70\insrsid12927076\charrsid15955878 is}
 {\cs46\b\i\fo\expnd4\expndtw20\insrsid12927076\charrsid15955878 the appropriate sentence and
 we so hold"

\par }\pard\plain\s21\qj\li0\ri0\sl-240\slmult0\widctlpar\faauto\rin0\lin0\itap0
 \f35\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
 {\f0\insrsid12927076\charrsid15955878

\par }\pard\s21\qj\li0\ri0\sb221\sl-475\slmult0\widctlpar\faauto\rin0\lin0\itap0\pararsid15955878
 {\cs36\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 A}
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 s}{

\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 we}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 pointed}{}

\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 out}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 earlier,}{}

\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 appellant's}{}

\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 counsel}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 had}{}

\cs40\f0\expnd2\expndtw10\insrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 urged}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 court}{}

\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 to}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 reduce}{}

\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
 {\cs40\f0\insrsid12927076\charrsid15955878 }
 {\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 period}{}

\cs40\f0\insrsid12927076\charrsid15955878 }
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{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 11}{

\cs40\f0\expnd2\expndtw10\insrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 years}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 to}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 7}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 years}{

\cs40\f0\expnd2\expndtw10\insrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 because}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 of}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 period}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 which}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 appellant}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 had}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 spent}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 in}{

\cs40\f0\expnd2\expndtw10\insrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 custody}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 before}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 his}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 conviction.}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 The}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 court}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 did}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 not}{

\cs40\f0\expnd2\expndtw10\insrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 consider}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 these}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 arguments}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 and}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 therefore}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 never}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 indicated}
{\cs40\f0\expnd2\expndtw10\insrsid10375287 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 whether}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 the}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 argument}{

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{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 was}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 baseless}{

\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 or}
{\cs40\f0\insrsid12927076\charrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 not.}{

\cs40\f0\insrsid12927076\charrsid15955878 \tab }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 Our}
{\cs40\f0\expnd2\expndtw10\insrsid15955878 }
{\cs40\f0\expnd2\expndtw10\insrsid12927076\charrsid15955878 understanding}{

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favour of the accused, when a sentence of imprisonment is imposed. Our understanding of the judge, in th

is case, is that the three years spent on remand by the appellant is part of the sentence of 11 years. The effect of that is that although the learned trial judge alluded to clause (8) he did not apply it practically in that he sentenced the appellant for

a period during which he was deemed to be innocent. In our opinion, the intention of the learned judge must have been that the period of 3 years spent on remand is to be subtracted from the sentence of 11 years. This is consistent with our other decisions

comprised in the three appeals upon which Mr. Kafuko-Ntuyo relied and which appeals we have referred to already in this judgment.}{\insrsid12927076\charrsid15955878

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We accordingly think that the learned Justices of Appeal erred by effectively maintaining the sentence of 11 years. We allow

the appeal. To that extent we set aside that sentence. Instead we substitute it with a sentence of 8 years which the appellant is to serve from 1/3/2001, the day when the trial judge first sentenced him.

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Prepared on 14 October 2026 · Esheria