

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

CN1/2024

(arising out of CR331/2023)

CN2/2024

(arising out of CR332/2023)

CN3/2024

(arising out of CR333/2023)

In the matter between:

DAVID MELLIE
(rep. by Mr. Uranie)

Appellant

and

THE REPUBLIC
(rep. by Ms. Vel)

Respondent

Neutral Citation: *Mellie v Republic* (CN1/2024 (arising out of CR331/2023), CN2/2024 (arising out of CR332/2023), CN3/2024 (arising out of CR333/2023) [2025] (27th August 2025)

Before: A. Madeleine, J

Summary: *Appeal against Sentence upon guilty plea – Power of sentencing court to order consecutive and concurrent sentences – Power of appellate court to interfere with sentences*

Heard: Written Submissions

Delivered: 27th August 2025

ORDER

- (a) Under Ground 1, the appeal is dismissed.
- (b) Under Ground 2, the appeal is allowed in that the sentence of imprisonment under Count 2 of CO333/2023 should be made to run concurrently to the other sentences.
- (c) Under Ground 3, the appeal is allowed as follows –
 - (i) Sentence of imprisonment for 10 months in CO331/2023 is reduced to 5 months' imprisonment;
 - (ii) Sentence of imprisonment for 5 years' imprisonment for count 1 and to 18 month's imprisonment for count 2 in CO332/2023 is reduced to 4 years for count 1 and 6 month's under count 2;

The Sentence of imprisonment for 3 years under count 1 and 6 months for count 2 in CO333/2023 are upheld.

JUDGMENT

A. MADELEINE, J

Background

- [1.] These criminal appeals – CN. 1 of 2024 (arising from CR331/2023), CN. 2 of 2024 (arising in CR332/2023) and CN. 3 of 2024 (arising in CR333/2024) – filed by the Appellant have been consolidated for the purposes of the hearing.
- [2.] The Appellant in all these appeals was convicted before the Magistrates court in CR331/2023, CR332/2023 and CR333/2023 on his own unequivocal guilty plea and admission of prosecution's facts and was sentenced on 23rd December 2023.
- [3.] On a single charge of Stealing in CR331/2023, the Appellant was sentenced to 10 months' imprisonment. The charge reads as follows:

"Count 1

Statement of Offence

Stealing contrary to and punishable under section 260 of the Penal Code

Particulars of Offence

David Guy Mellie of Copolia, Mahe, on the 16th of June 2023, at Bel Eau, Mahe, 14 avocados, all at a value of Rs.180/-, being the property of Guy Savy."

- [4.] In CR332/2023, the Appellant was sentenced to 5 years' imprisonment for housebreaking and 18 months' imprisonment for stealing. The charge reads as follow:

"Count 1

Statement of Offence

Housebreaking contrary to section 289(a) and punishable under section 289 of the Penal Code

Particulars of Offence

David Guy Mellie of Copolia, Mahe, on the 2nd of June 2023, at Bel Eau Mahe, broke and entered into the dwelling house of Icia Naiken by way of breaking the door knob of the back door and gaining access inside the house and committing a felony therein namely stealing.

Alternative to Count 1

Statement of Offence

Entering dwelling house contrary to and punishable under section 290 of the Penal Code

Particulars of Offence

David Guy Mellie of Copolia, Mahe, on the 2nd of June 2023, at Bel Eau, Mahe, entered into the dwelling house of Icia Naiken through the back door of the house, therein committed a felony namely stealing.

Count 2

Statement of Offence

Stealing contrary to and punishable under section 260 of the Penal Code

Particulars of Offence

David Guy Mellie of Copolia, Mahe, on the 2nd of June 2023, at Bel Eau, Mahe, entered into the dwelling house of Icia Naiken through the back door of the house, therein committed a felony namely stealing.”

- [5.] In CR333/2023, the Appellant was sentenced to 3 years’ imprisonment for the offence of attempted housebreaking and 6 months’ imprisonment for the offence of damaging property. The charge reads as follows:

“Count 1

Statement of Offence

Attempted Housebreaking contrary to and punishable under section 289(a) as read with section 378 of the Penal Code

Particulars of Offence

David Guy Mellie of Belvedere, Mahe, on the 16th of June 2023, at St Louis Mahe, attempted to break and enter into the dwelling house of Marie Celine Pool by way of removing the burglars bar and tampering with the sliding window with intent to commit a felony therein.

Count 1

Statement of Offence

Damaging Property contrary to and punishable under the section 325(1) of the penal code

Particulars of Offence

David Guy Mellie of Belvedere, Mahe, on the 16th of June 2023, at St Louis Mahe, wilfully and unlawfully damaged the Burglars bar and sliding window of Marie Celine Pool, with repair cost being a total of Rs3000/-.”

Appeal

- [6.] Aggrieved by the sentences imposed by the learned trial magistrate in cases CR331/2023, CR332/2023 and CR333/2023, the Appellant, through the Prison

Service, lodged 'a notice of appeal out of time' dated 15th February 2024 on the ground that the sentences were too harsh.

- [7.] The Republic did not object to leave being granted to the Appellant to prosecute his appeal out of time, and on 12th November 2024, Counsel for the Appellant filed Notice of Appeal and Memorandum of Appeal challenging the sentence on three grounds:

“Ground 1

The learned Magistrate erred in law and fact in imposing that sentence run consecutively in CO331/2023 and CO332/23 where offences relate to the same course of action.

Ground 2

The learned Magistrate erred in law and fact in failing to impose that count 2 in CO333/23 run concurrently.

Ground 3

The sentence is manifestly excessive and harsh considering that the Learnt Magistrate failed to consider the totality principle in ordering that the Sentences run consecutively.”

- [8.] The appeal was heard by way of written submissions, and submissions were duly filed by counsel for Appellant and for the Republic. The Court is thankful, and commend counsels, for their concise and relevant submissions on the issues arising in this appeal. The submissions are fully considered by the Court herein as applicable.

Law and Analysis

- [9.] The grounds of appeal are considered together.

[10.] Grounds 1 and 2 of the Appeals challenge the learned Magistrates' order that the sentences imposed in CO331/2023 and CO332/23 and count 2 in CO333/23 run consecutively instead of concurrently. Ground 3 of the Appeal challenges that the sentences imposed by the learned trial magistrate was manifestly harsh and excessive in the circumstances.

[11.] It is trite that an appellate court will not interfere with the sentence passed by a lower court unless there are good reasons to do so. In the case of *Kanapathi v R* (SCA CR 14/2021) [2022]¹ the Court of Appeal reviewed the Seychelles jurisprudence and restated the following principles –

“16. The task of the sentencing judge is to balance all these factors. We also recognise that sentencing remains one of the most delicate processes of our criminal justice system and that sentencing judges ought to be given wide latitude. For this reason, our jurisprudence has reiterated on several occasions, and as far back as the 1960s in Dingwall v R, that an appellate court will not lightly interfere with a sentence passed by a lower court. In Mathiot v R, this court stated that under rule 41 (2) of the Seychelles Court of Appeal Rules, the Court of Appeal may, if it thinks a different sentence should have been passed, substitute such other sentence warranted in law as it thinks ought to have been given. Still, the court cautioned that the court should only intervene if:

- (a) The sentence was harsh, oppressive and manifestly excessive.*
- (b) The sentence was wrong in principle.*
- (c) The sentence was far outside the discretion limits of the Court.*
- (d) Where a matter had been improperly taken into account by the trial Court or where a matter which should have been taken into account was not taken into account by the trial Court.*
- (e) Where the sentence imposed was not justifiable in law.*

¹ SCCA 36 (19 August 2022) (Arising in CR 62/2021).

17. Other principles to be borne in mind include the individualisation of the sentence and proportionality. This is why this court, in the seminal case *Poonoo v R*, found it necessary to expose on the sentencing principles even in the face in mandatory statutory sentences. It first held that:

“Sentencing involves a judicial duty to individualise the sentence tuned to the circumstances of the offender as a just sentence.”

18. It also held that Article 19(1) of our Constitution behoves the court to ensure fair hearings and emphasised that a:

“[F]air hearing includes fair sentencing under the law but includes individualisation and proportionality.”

19. The court in *Poonoo* also held that the minimum mandatory sentence imposed by law might be appropriate in certain situations, but not if indiscriminately applied without considering factors that would mitigate the seriousness of the offence. The court held that there are three tests which a minimum mandatory sentence must pass before the court can depart from the minimum mandatory sentence imposed by the law.:

“1. The first test is the test of parliamentary power. It is as follows:

(a) is the penalty imposed by the legislature wholly or grossly disproportionate with regard to the mischief to be avoided;

(b) if it is, then it is unconstitutional as it violates article 16;
(c) if it is not, a second test should be applied in relation to article 119(2).

2. The second test is the test of judicial power under article 119(2). It is as follows:

(a) does the mandatory provision remove all discretion from the court to exercise its judicial powers to sentence an offender in the particular circumstances of his case;

(b) If it does, the law is unconstitutional and constitutes a breach of section 119(2) of the Constitution inasmuch as the legislature in that case is, thereby, interfering with the independence of the judiciary.

(c) If it does not, a third test should be applied.

3. And the third test is the test of the right of the citizen under the Constitution. It is as follows:

(a) does the mandatory provision breach the principle of proportionality, fair trial or other imperatives of a democratic system;

(b) If it does, the law is unconstitutional and constitutes a breach of section 1 in terms of that principle or imperative.

(c) If it does not, that is the end of the matter.”

(Emphasis added)

[12.] As regards, appeals against sentences ordered upon a guilty plea, the Court of Appeal in *Shabani v R*² explained that –

“The effect of pleading guilty and saving the precious time of Court as a sign of remorse is diminished when appellants who have been given light sentences think that they can appeal to have their sentences reduced, since the word remorse means deep regret that torments one for having done something wrong. Although by pleading guilty, it can be said a person admits responsibility for the offence, but by appealing against a light sentence without a legal or factual basis there is no demonstration of visible suffering in demeanour by such person, which is empathic and not self-focussed and indicative of personal transformation.”

(Emphasis added)

[13.] The Court of Appeal also observed that –

“.....No doubt an accused has a right of appeal to the Court of Appeal under the Constitution, but where this Court is of the view that there is no legal or factual basis whatsoever to challenge the sentence of the sentencing court on the known principles of sentencing and it is simply

² SCA CRO32024) 2024 arising in CO 462022 2024 SCCA (19 AUG 2024)

an attempt by a person to try out his luck, a message should go out that this will not be tolerated by this Court.”

(Emphasis added)

- [14.] On the trial Court’s power to order consecutive and concurrent sentences, Section 36 of the Penal Code provides that –

“ 36.Sentences cumulative, unless otherwise ordered

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or of any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence under Chapter XXVI, Chapter XXVIII or Chapter XXIX be executed or made to run concurrently with one another or that a sentence of imprisonment in default of a fine be executed concurrently with the former sentence under section 28(c)(i) of this Code, or any part thereof.”

(Emphasis added)

- [15.] In *Laurencine v R*³ the Seychelles Court of Appeal per Fernando PCA, clarified the interpretation to be given to section 36 of the Penal Code and held that –

“22. It is my view that a court is mandated, to act in accordance with the provisions section 36 of the Penal Code and give consecutive sentences, in cases where convictions have taken place under different indictments and not where the convictions for different offences take place simultaneously in respect of offences committed at the same time and in the course of the same transaction under one indictment as in this case.”

(Emphasis added)

³ [2022] SCCA 64 (16 December 2022)

- [16.] *Laurencine* (supra) also clarified that while sentences for offences committed during the same transaction are generally served concurrently, there is no absolute bar to imposing consecutive sentences:

“The words “after conviction”, “before sentence is passed upon him under the first conviction” or “before the expiration of that sentence” in section 36, is suggestive of this. In the instant case both convictions had been at the same time, in the same judgment, delivered on the same date and both sentences had also been delivered at the same time, in the same Order, delivered on the same date. There is however no bar for a court to order that sentences passed in respect of different offences committed in the course of the same transaction charged under one indictment be served consecutively. In my view consecutive sentences would be appropriate where the gravamen of the offences committed during the same transaction are different, and where there are clearly identifiable differences between the offences committed, for instance robbery and sexual assault.” (Emphasis added)

- [17.] *Laurencine* (supra) further clarified that –

*“The court also has the discretion under section 36 to order that any sentence, which is passed shall be executed concurrently with the former sentence or of any part thereof. The latter part of the earlier sentence which is underlined simply means, for instance in this case the court could have passed a sentence of 15 years in respect of count 1 and ordered that the sentence of 15 years in respect of the second count be executed concurrently one or more years after the commencement of the sentence in respect of count 1, thereby imposing a total sentence of imprisonment of 16 years or more, namely up to 28 years. This manner of sentencing by making the sentences partially cumulative has been adopted in **Mill V the Queen [1988] 166 CLR 59**. In the case of **Dickens V. The Queen [2004] WASCA 179**, the Court of Criminal Appeal of Western Australia following *Mill*, ordered for cumulative service of the terms imposed by the trial court to one of partial cumulacy.”* (Emphasis added)

[18.] In *Sinon v R*⁴ the Appellant had been convicted in the Magistrates' Court on two counts for Housebreaking and Stealing from a dwelling house on his own guilty plea. He was sentenced to imprisonment for 5 years for housebreaking and 3 years for stealing to run consecutively, totalling 8 years in prison. On appeal, the Appellant argued that the offences occurred during a single transaction, and therefore the sentences should have been ordered to run concurrently and not consecutively. The appellate court considered that the order for consecutive sentence was wrong in principle as the offences formed part of a single criminal event with the same intent and continuity of action. The appellate court upheld the total sentence of 8 years' imprisonment but altered the structure by substituting a sentence of 8 years under Count 1 and Count 2 respectively to run concurrently.

[19.] In the present appeals, I note that the criminal cases *CO331/2023*, *CO332/2023* and *CO333/2023* were consolidated before the Magistrates Court for purposes of sentencing only. Upon a review of the respective charges filed and the records of proceedings before the Magistrates' Court, I find that the offences in *CO331/2023*, *CO331/2023* and *CO332/2023* do not arise from the same transaction. In *CO331/2023*, the offence of stealing was committed on 16th June 2023 by stealing 14 avocados of the total value of RS.180/- from the property of Guy Savy at Bel Air and the Appellant was sentenced to 10 months' imprisonment. In *CO332/2023*, the offences of Housebreaking and Stealing from dwelling house were committed on 2nd June 2023 at the house of Icia Naiken Bel Eau, Mahe and sentences of imprisonment for 5 years for Housebreaking (count 1) and 18 months for Stealing from dwelling house (count 2) were imposed. In *CO333/2023*, the offences of attempted housebreaking and damaging property were committed on 16th June 2023 and sentenced to imprisonment for 3 years for attempted housebreaking (count 1) and damaging property (count 2) committed at the dwelling house of Marie Celine Pool at St. Louis, Mahe.

[20.] The offences in *CO331/2023* and *CO332/2023* were committed on different dates and at different places. Although committed on the same date: 16th June 2023, the offences in *CO331/2023* and *CO333/2023* were committed at different places. I

⁴ (CN 05 of 2023 (Arising in CO 416 of 2022)) [2024] SCSC 91 (20 June 2024)

note that the offences in *CO331/2023*, *CO332/2023* and *CO333/2023* are not of a different nature all being offences covered under *Division V* of the Penal Code: *Offences relating to property*, subject to the proviso to section 36 of the same Code.

- [21.] I also note that the offence of Stealing under *CR331/2023* (CN1/2024) and under count 2 of *CO332/2023* (CN2/2024) is covered under Chapter XXVI of the Penal Code. The offence of Housebreaking under count 1 of *CO332/2023* (CN2/2024) and attempted Housebreaking under count 1 of *CO333/023* (CN3/2024) is covered under chapter XXIX of the Penal Code. The offence Malicious injuries is covered under chapter XXXIII of the Penal Code.
- [22.] Given the purport of section 36 of the Penal Code as interpreted in the case of *Laurencine* (supra) the learned Magistrate did not err in ordering that the sentences in *CO331/2023* and *CO332/2023* run concurrently. Ground 1 of the appeal therefore fails.
- [23.] The proviso to section 36 of the Penal Code do not cover offences under chapter XXXIII of the Penal Code. Therefore, the learned Magistrate was not obligated to order that the sentence for malicious injuries under count 2 of *CR333/2023* run consecutively to the other sentences imposed. Ground 2 of the appeal is allowed.
- [24.] Considering the circumstances of the offence under *CO331/2023* as made out in the accepted facts and the applicable principles reiterated in the case of *Kanapathi* (supra) I am of the view that the sentence of 10 months' imprisonment for stealing of 14 avocados of the total value of SCR.180/- was harsh and excessive in the circumstances and a lesser sentence is called for.
- [25.] I also consider the overall circumstances of the offences in *CO332/2023* and *CO333/23* as made out in the accepted prosecution's facts, the fact that the Appellant was not a first time offender at the time of sentencing and to the totality principle. It is my view that while the sentence of imprisonment for 3 years under count 1 and 6 months for count 2 in *CO333/2023* should be upheld, the sentence to imprisonment for 5 years' under count 1 and to 18 month's imprisonment for count 2 in *CO332/2023* should be reduced.

Order

[26.] Based on the above analysis, I order as follows –

- (a) Under Ground 1, the appeal is dismissed.
- (b) Under Ground 2, the appeal is allowed in that the sentence of imprisonment under Count 2 of CO333/2023 should be made to run concurrently to the other sentences.
- (c) Under Ground 3, the appeal is allowed as follows –
 - (i) Sentence of imprisonment for 10 months in CO331/23 is reduced to 5 months' imprisonment;
 - (ii) Sentence of imprisonment for 5 years' imprisonment for count 1 and to 18 month's imprisonment for count 2 in CO332/23 is reduced to 4 years for count 1 and 6 month's under count 2;

The Sentences of imprisonment for 3 years under count 1 and 6 months for count 2 in CO333/23 are upheld.

Signed dated and delivered at Ile Du Port, Mahe on this 27th August 2025.


A. Madeleine, J.

