REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

HCCRA NO. 41 OF 2018

BRIAN CHIRCHIR.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Principal Magistrate's Court

at Kabarnet Cr. Case no. 653 of 2017 delivered on the 24th day of October, 2017

by Hon. S.O. Temu, PM]

JUDGMENT

1. The appellant seeks reduction of sentence of 5 years for the offence of Grievous harm contrary to section 234 of the Penal Code passed on him by the trial Court on 24/10/2017. He pleads he is "an orphan and I came from a poor family. I was struggling on my casual part time jobs in order for my family to get basic need. I have a wife and a child and they are now staying with my brother of which he is not a responsible person he cannot afford to provide for their basic needs and his family as well considering he is not employed. I kindly pray for a said chance to build up the nation through my skills and provide for my family now that I have learned my mistake of which they emanated from my high temperament which I have learned to control."

2. The DPP opposed the appeal, pointing out that the appellant had at the hearing only served 1 year 5 months of the sentence of 3 years 5 months with remission, and that the offence was committed in prison where he was serving another sentence from offence of assault, and that he was, therefore, a repeat offender.

Determination

3. The offence of grievous harm contrary to section 234 of the Penal Code provides for a maximum penalty to imprisonment for life.

4. The appellant had pleaded guilty to the charge and facts of the case which he accepted indicate that the complainant has lost "*one of his incisor tooth*", during the assault. The facts also show that the assault ensued an argument between the complainant and the appellant both of whom were remanded at the G.K. Prison.

5. Being mindful of the principles for interference by an appellate Court with the sentencing discretion of a trial Court (see ***Wanjema v. R*** (1971) EA 493) I consider that the trial Court erred in not giving the appellant a credit for his plea of guilty for the offence of grievous harm, even though he was not a first offender.

> "A sentence must in the end, however, depend upon the facts of its own particular case. In the circumstances with which we are concerned a custodial order was appropriately made. But that which was made cannot possibly be allowed to stand. An appellate Court should not interfere with the discretion which Court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case. **The instant sentence merits this Court's interference with it on each of these grounds. No account was taken, as it should have been, of the fact that the appellant pleaded guilty**: Skone (1967), 51 Cr. App. R. 165 and Godfrey (1967), 51 Cr. App. R. 449."

6. I consider that a sentence of imprisonment for 4 years meets the justice of the case. The sentence shall run from the 24/10/2017 when the appellant was convicted and sentenced by the trial Court.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF JUNE 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent