

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 81 OF 2019

COLLINS OTIENO OTIENOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against Conviction and Sentence in judgment delivered on 8.11.2019 in Bondo Principal Magistrate's Court Criminal Case No. 578 of 2018 before Hon. E.N. Wasike – Senior Resident Magistrate)

JUDGMENT

1. The appellant filed this appeal challenging both conviction and sentence but at the hearing hereof today, he has applied and had the appeal against conviction withdrawn. He now urges the court to consider reducing for him the sentence imposed.
2. On Sentence, I observe that the Appellant was sentenced to serve 20 years imprisonment in Count 1 for Robbery with Violence whereas in Count 2 of having suspected stolen goods he was sentenced to serve 6 months imprisonment
3. The Sentences meted out on the Appellant are lawful and lenient considering the maximum death sentence for the offence of Robbery with Violence and on a lenient side it could have been life imprisonment. In Count 2, the Appellant was sentenced to serve six months imprisonment. The offence is a misdemeanor and the sentence was lawful and lenient as the general punishment for misdemeanors in Section 36 of the Penal Code is imprisonment for a term not exceeding two (2) years with a fine or with both. Six months imprisonment was therefore lenient.
4. The Appellant in the trial Court only asked for leniency and a shorter sentence, in mitigation. Sentencing is in the discretion of the trial Court. There is nothing on record to show that the trial Court exercised wrongly his discretion in sentencing or that he took into account irrelevant factors or that he failed to take into account relevant factors and circumstances of the offence.
5. The Appellant is said to have been a first offender and he has mitigated further, asking this Court for leniency and submitting that he was influenced by bad friends and that he will not repeat the offence. He says he was unmarried, is an orphan and he has enrolled in prison training as a carpenter. There is no proof but the Appellant having at this appeal stage withdrawn his appeal against conviction, he acknowledges that he committed the offence with which he was convicted and sentenced. He has also saved this Court time of considering the merits of the appeal against conviction.
6. He is a young man aged about 27 years old. The Complainant did not sustain serious injuries, only described as harm. I exercise discretion and reduce the prison sentence imposed on him by the trial Court and resentence the Appellant to serve twelve (12) years in prisons to be calculated from the date he was sentenced on 8.11.2019 as he absconded bond terms.
7. Orders accordingly.

Dated, Signed and Delivered at Siaya this 27th January, 2020.

R. E. ABURILI

JUDGE

In the presence of:

The Appellant in person

Mr. Okachi SPPC for the Respondent

CA: Brenda and Modestar