

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 31 OF 2013

RONALD KIBITOK:..... APPELLANT

VERSUS

REPUBLIC:..... RESPONDENT

RULING

On 27th May, 2014, the appellant Ronald Kibitok withdrew his entire appeal. On that date, he had addressed the court (Ochieng, J.) as follows:-

“I have made a decision to withdraw my appeal. I have been in jail since 2012. I am left with 3 more years. I ask this Court to consider enabling me finish the balance of the sentence outside.”

The State had no objection for withdrawal of appeal. The Court then called for a probation report to consider the appellant's request for a non-custodial sentence. On 3rd July, 2014, the Probation Service filed a report. The report is favourable to the appellant.

The appellant had been convicted for theft of stock contrary to Section 278 of the Penal Code. He was sentenced to 7 years in prison on 24th May, 2012. The petition of appeal that was withdrawn was primarily against the sentence, it was titled **“Mitigation of Appeal.”**

Having withdrawn that appeal, there is no legal foundation for this court to review the sentence notwithstanding the favourable probation report. The appellant by withdrawing the appeal elected to abide by the sentence. The maximum sentence for the offence under Section 278 of the Penal Code is 14 years imprisonment. The appellant thus received half of the sentence. He has served only two years. He is not even within the threshold of the community services orders act. Probation was itself a punishment that the subordinate court could have given it didn't. In the absence of an appeal on sentence, I can not review the sentence under Section 354 of the Criminal Procedure Code.

Granted all those circumstances, the plea by the appellant for early release from prison custody is refused. It is so ordered.

G.K. KIMONDO

JUDGE

10th July, 2014

Ruling read at 2:30p.m, signed and dated in open court in the presence of:-

Mr. Ronald Kibitok - Appellant

Ms. Mwaniki -For the State

Mr. Weyama -Court Clerk