

THE STATE
versus
POLITE RUNESU

HIGH COURT OF ZIMBABWE
MAWADZE J & ZISENGWE J
MASVINGO, 5 May 2022

Review Judgement

ZISENGWE J: The accused was convicted following his plea of guilty to a charge of escaping from lawful custody in contravention of section 185 (1) (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] ('the criminal code'). The uncontested facts are that the accused, who was a serving prisoner at the Buffalo Range prison and correctional facility in Chiredzi, was assigned, under guard to collect some firewood in a nearby bushy area. That was on the 25th of February 2022. He then surreptitiously sneaked away unnoticed and made good his escape. His unearned liberty was however short-lived as he was apprehended barely a week later, on the 3rd of March 2022 to be precise, hurled before the court on the aforesaid charges and convicted.

For the transgression, the accused found himself at the wrong end of the judicial stick, so to speak, as he was sentenced to a term of imprisonment of 36 months.

The record of proceedings was then submitted to this court for review in the ordinary course. The conviction is without incident and I have no quarrels with it. It is with the severity of the punishment that was meted out that I expressed disquiet in the query that I directed to the Magistrate. I wrote :

“Is a sentence of 36 months imprisonment not excessive for the offence of escaping from lawful custody in light of the circumstances of the case, particularly that no violence was

used and no damage was occasioned to State property in the course of escaping and further that the accused was apprehended hardly a week after such escape?”

The learned Magistrate has since written back graciously conceding that with hindsight she realises that the sentence was rather excessive. She urges this court to take appropriate remedial action.

The concession is well founded. The offence of escaping from lawful custody, while being one to be frowned upon as it undermines the due administration of justice, is one which should nonetheless be met with an appropriately measured and tempered judicial response.

In terms of section 185 (1) (b) (i) (B) of the Criminal code the sentence for escaping from lawful custody after one’s lodgement in prison is imprisonment for a period not exceeding 10 years. There is no provision for the imposition of a fine, deservedly so. The length of the custodial sentence to be imposed will therefore depend on the circumstances of the case.

Some of the factors which bear on the appropriate sentence include the method employed to effect the escape, whether violence or threats of violence were used to facilitate the escape and whether there was damage to State property in the course of escape (such as tempering with prison walls and or fences). All these were absent in the present case. The accused merely took advantage of the laxity in guarding him to sneak away unnoticed.

Also relevant for sentencing purposes is the period during which the accused was on the run as a fugitive from justice and the difficulty associated with his apprehension in the wake of the escape. In this case the accused was accounted for barely a week after his unmerited sojourn from gaol.

I hold the view that the sentence of 36 months imprisonment visited upon the accused was rather excessive in the circumstances and lends itself to interference by this court. A sentence of 18 months with 6 suspended the usual condition is my view appropriate and meets the justice of the case. Accordingly the following order is made.

The conviction is hereby confirmed the sentence is however set aside and substituted with the following.

“18 months imprisonment of which 6 months imprisonment is suspended for 5 years on condition accused does not within that period commit any offence involving the unlawful escape from lawful custody in contravention of section 185 of Criminal Law (Codification

and Reform) Act, [Chapter 9:23] and for which upon which accused is sentenced to imprisonment without the option of a fine.”

The accused to be brought to court within 7 days of the receipt of this order to be notified of the above alteration to his sentence.

MAWADZE J agrees.....

ZISENGWE J

A handwritten signature in black ink, appearing to read "Zisengwe". The signature is written in a cursive style with a large initial letter.