

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: **SACKY TORKORNOO (MRS.) CJ (PRESIDING)**
LOVELACE-JOHNSON (MS.) JSC
ASIEDU JSC
GAEWU JSC
KWOFIE JSC

2ND APRIL, 2025

CRIMINAL APPEAL
J3/11/2023

MUSTAPHA IDRISU

.....

APPELLANT

VRS

THE REPUBLIC

.....

RESPONDENT

JUDGMENT

KWOFIE, JSC:

My Lords, the issue for determination in this appeal is a very simple one: whether a convict/appellant who has finished serving the sentence imposed on him and has been released from prison custody, could have his sentence enhanced by the appellate court.

The appellant launched the instant appeal against the judgment of the Court of Appeal, Accra dated the 2nd June 2022. The Court of Appeal dismissed the appellant's appeal against his conviction and sentenced by the High Court, Accra. The court also enhanced the 5-year sentence imposed on the appellant by the High Court to 10 years I.H.L. It is against this enhancement of the sentence which had at the time been fully served by the appellant and who had been discharged from prison which is the subject of this appeal. The appellant appealed against the sentence by a Notice of Appeal dated 27th June 2022.

The facts giving rise to this appeal are not much in dispute. The complainant Obuoba Addy and the victim Ayitey Okaidja who were members of the Sakumo Amartse We family of Accra were assigned to visit the family land at Adjangote near Kwabenya, Accra to ensure that encroachers did not take over the land. On 11th November 2013, when the two went unto the land they met some people working on the land and in an attempt to enquire from those workers who gave them the land, they were confronted by the appellant herein Mustapha Iddrisu, Ahmed Dawood, Baaba Yaro and others now at large who claimed they were hired by the first accused person to protect the land. During a misunderstanding between the two factions, the victim Ayitey Okaidja attempted to make a phone call and that infuriated the other parties. The appellant Mustapha Iddrisu suddenly attacked the victim with a sharp cutlass and cut off his left hand at the wrist. The complainant rushed the victim to the Ghana Atomic Energy Commission (GAEC) Clinic and later made a report to the police. The police accompanied the complainant to the crime scene and recovered the severed hand and the victim was later referred to the Korle Bu Teaching Hospital where he was admitted for treatment but the severed hand could not be re-attached.

JUDGMENT OF THE HIGH COURT

The appellant was charged before the High Court, Accra with the offence of Causing Harm contrary to section 69 of the Criminal and Other Offences Act 1960 (Act 29). At the end of the trial, the appellant was convicted and sentenced to 5 years I.H.L. and was ordered to pay GH¢10,000 as compensation to the victim Ayitey Okaidja.

JUDGMENT OF THE COURT OF APPEAL

The appellant appealed to the Court of Appeal against the conviction and sentence. The Court of Appeal on the 2nd June 2022 dismissed, the appeal and upheld the conviction and sentence of the appellant and enhanced the appellant's sentence from 5 years to 10 years I.H.L.

APPEAL TO THE SUPREME COURT

Being dissatisfied with the enhancement of his sentence by the Court of Appeal from 5years to 10years I.H.L, the appellant appealed to this court against the enhancement of his sentence on the following grounds:

- a. The judgment (sic) proceedings had become moot when the Court of Appeal assumed jurisdiction to deliver judgment on the appellant's appeal, there being no sentence to be reversed, reduced or enhanced as the appellant had fully served the five (5) years sentence imposed by the trial High Court.*

- b. The enhancement of the appellant's sentence on 2nd June, 2022 was harsh, unreasonable and amounted to a nullity (sic) which has resulted in a substantial miscarriage of justice.*

SUBMISSIONS OF THE APPELLANT

Counsel for the appellant submitted that the Court of Appeal in enhancing the five-year sentence which had already been served by the appellant to ten (10) years was harsh, null and void and occasioned a substantial miscarriage of justice and referred to Section 31 of the Courts Act 1993 (Act 459). He further submitted that the appellant having fully served the five-year sentence at the time the Court of Appeal purported to enhance the sentence, the appeal before the Court had become moot.

SUBMISSION OF RESPONDENT

Counsel for the Respondent submitted that the issue of mootness of the appeal before the Court of Appeal did not arise. She admitted that the appellant, for a fact, was out of prison custody having finished serving the five (5) year sentence imposed on him as at the date the Court of Appeal delivered its judgment in respect of the appellant's conviction and sentence. She added however that the appellant's appeal not having been withdrawn, was still pending before the Court of Appeal before his release from prison. She contended that the fact that the appellant had finished serving the sentence did not in any way make the appeal before the Court of Appeal moot and the Court was right in hearing the appeal and this process of rehearing the appeal which was pending even after the appellant had finished serving his sentence does not raise the issue of double jeopardy.

DETERMINATION OF THE APPEAL

In determining this appeal, it is necessary to state that it is common ground between the appellant and the respondent that at the time of the judgment of the Court of Appeal dismissing the appellant's appeal and enhancing his 5-year sentence on 2nd June 2022, the appellant had already been discharged from prison after serving his 5 year prison term.

And the record of appeal shows that the fact of the appellant having completely served his 5-year term and his discharge from prison was brought to the attention of their Lordships of the Court of Appeal. We reproduce in extenso the court note of 2nd of June 2022 at page 227 of the Record of Appeal:

"Parties: *Appellant present*

Counsel: *Inua Yusuff for the convict/appellant present*
Ameley Agyemang (SA) for Republic/Respondent

By Court: *The judgment is ready and is unanimous.*

The appellant was present in court and was told that we upheld the decision of the Trial High Court in the conviction but we are of the opinion that 5 years sentence too linnet (sic). In view of that we intend enhancing same as the law allows. This was explained to the appellant in court in Twi and he pleaded with the court to be linnet (sic) with him.

Counsel: *Counsel prayed the court to temper justice with mercy. That he has shown high level of remorse. That the Convict has just been discharged from prison after serving his 5 years term.*

State Attorney: *Left it to the court's discretion*

By Court: *This court hereby enhance the convict (sic) to 10 years I.H.L. We shall leave the compensation of the GH¢10,000.00 as it is because of the 5 years he served earlier."*

The fundamental and pivotal issue for determination is whether having regard to the fact that the appellant had fully served the 5-year sentence and been discharged from prison, their Lordships of the Court of Appeal were right and dealt fairly and reasonably with the appellant by enhancing his sentence from 5 years to 10 years. One would have thought that for a sentence to be enhanced, the sentence itself must be subsisting. Our researches has not revealed a similar case in our jurisdiction which our courts have made a clear judicial enunciation as to the law relating to enhancement of sentence after same had been fully served but we refer to the case of **State vs. Heyward 152 Conn. 426, 207 A. 2d 730 (1965)** where the Supreme Court of the State of Connecticut in the United States set aside the judgment of the appellate court which had enhanced the appellant's sentence for a narcotic offence after he had completely served his original sentence. The Supreme Court held that since the appellant had fully served his original sentence before the enhanced sentence was imposed, he was entitled to be freed. The Court stated as follows:

"To subject him, instead to another, and more severe judgment for the same offence placed him in jeopardy for the crime for which he had already paid the penalty"

Section 31(1) of the Courts Act 1993 (Act 459) provides as follows:

- 1) *"Subject to subsection (2) an appellate court on hearing an appeal in a criminal case shall allow the appeal if the appellate court considers*
 - a) *That the verdict or conviction or acquittal ought to be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or*
 - b) *That the judgment in question ought to be set aside as a wrong decision on a question of law or fact, or*

c) *That there was a miscarriage of justice*

And in any other case shall dismiss the appeal."

The rule that appeals are by way of rehearing is not, limited to substantive appeals only, but the sentences passed, provided an appeal lies therefrom and how long the appellant has spent in custody.

Article 14(6) of the 1992 Constitution provides that:

"14(6) where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment."

In the case of **Bosso vs. The Republic (2009) SCGLR 421 at 429** this Court referred to this provision of the 1992 Constitution when it decided to enhance the sentence of an appellant and stated as follows per Georgina Wood C.J (as she then was):

"This clear constitutional provision enjoins judges, when passing sentence, to take any period spent in lawful custody before the conclusion of the trial into account. A legitimate question which might arise in any given case which does, indeed, arise from consideration in this instant appeal, is how do we arrive at the conclusion that this constitutional mandate has been complied with? We believe this is discernible from the record of appeal. We would not attempt to lay down any hard and fast rules as to the form, manner or language in which the compliance should be stated, but the fact of compliance must either explicitly or implicitly be clear on the face of the record of appeal. Admittedly, the more explicitly the court expresses the position that it has taken into account the said period, the

better it is for everyone as it places the question beyond every controversy and leaves no room for doubt. Nonetheless, we think that any reference to the period spent in custody before the conclusion of the trial in a manner that suggests that it weighed on the judge's mind before deciding on the sentence should be sufficient."

We have taken into account all the circumstances surrounding this case and the fact of the appellant having served his original 5-year sentence not having weighed on the minds of His Lordships of the Court of Appeal in enhancing his original sentence and are of the view that the enhancement of the appellant's sentence at a time when he had fully served the original five (5) year sentence occasioned a substantial miscarriage of justice. Accordingly, we allow the appeal against the enhanced sentence which we hereby set aside as having been made without any justification.

(SGD.)

H. KWOFIE

(JUSTICE OF THE SUPREME COURT)

(SGD.)

G. SACKY TORKORNOO (MRS.)

(CHIEF JUSTICE)

(SGD.)

A. LOVELACE – JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

(SGD.)

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

(SGD.)

E. Y. GAEWU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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