

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 30TH DAY OF NOVEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA

SUIT NO: FCT/HC/CR/049/2023

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT

AND

TUNI WAHAP (AKA DAVID ROBBINS) DEFENDANT

Court: this matter is for arraignment

Defendant present in court

Offence: section 321 punishable under section 324 of the penal code.

Appearance: Maryam Aminu Ahmed

For the prosecution EFCC.

It appears that the defendant counsel is not in court

Court: the defendant is in court.

Defendant S. T. Sani for the Defendant

Prosecution: the matter is slated for arraignment a charge dated the 10/11/2023 having been served on the defendant. Subject to the convenience of the court apply to the court for the charge to be read to him

Court: clerk read the charge

Court: the charge is read and explained to the Defendant the defendant is called upon to reply to the said charge.

Court: defendant do you understand the charge.

Defendant Yes I do

Court: are you guilty or not guilty.

Defendant I am guilty.

Prosecution: in view of the plea of guilt by the defendant, we apply to the court to convict him accordingly.

CONVICTION

I am satisfied that the Defendant having understood the content of the charge read and explained to him in English Language and admitted same knowing fully well, the consequence of his admission, this court will accept the defendant's plea of guilty and convict the Defendant for the offence punishable under section 324 of the triable by this court

Defendant:

I want to plead allocutus

Allocutus:

Court: defendant proceed with your allocutus.

Defendant: I am sorry for all that I have done I have realised my mistake and promise not to do that again.

I plead to the court to give me a second chance and pray not to do that again

Defence counsel:

The convict is a teenager has realised his mistake and has promised to be a good person.

The convict is an orphan and no family member to assist him.

Urge the court to temper justice with Mercy and lean on section 270 (9) (10) and 11(b) of the ACJA 2015 and urge the court to award a lesser sentence and give an option of fine.

The defendant has no criminal conviction record and Is a first time offender.

Prosecution: do you have any record of previous conviction of theof the defendant known to you.

Prosecution: none to my knowledge

Apply to review the facts of the case.

Court: proceed;

The EFCC in the cause of investigation, it recovered I Phone 7 and I phone 7 plus, we apply to tender same as evidence.

The convict is yet to retribute the sum of \$150 Dollars he defrauded the victim Mr Timothy. We Urge the court to make an order for the convict to retribute same and to sentence the convict accordingly.

Court: sentence reserved to 30/11/2023.

The defendant be remanded in EFCC custody till this date by 2: pm

SIGND

JUDGE

29/11/2023

RESUMED

30/11/2023

SENTENCE:

The defendant was convicted for the offence with intent to defraud, falsely represented himself to be David Robbins and obtained the sum of \$150 (one Hundred and fifty dollars) from one Timothy, Vincent through gift card the offence punishable under section 324 of the penal code law.

Upon the conviction the defendant was asked if he wants to call evidence on his character or if he wishes to make a statement in mitigation of punishment. This he chose to make a statement in mitigation of punishment.

In his plea of mitigation of punishment, the defendant stated thus:

That he is sorry for all that he has done, have realised his mistake and promise not to do that again. He equally pleaded to the court to give him second chance.

In addition to the plea of mitigation of punishment by the defendant, the defence counsel one S.T. Sani told the court that the defendant is a teenager and have realized his mistake and has promised to be a good person.

Furthermore, that the convict is an orphan and has no family member to assist him therefore, urge the court to temper Justice with mercy and the court to apply the provision of section 27-0 (11) (6) of the ACJA 2015 and urge the

court to award the convict a lesser sentence by giving him an option of fine as the defendant has no criminal conviction record and he is a first time offender.

The prosecution to confirm that defence counsel submission, equally told the court that he has no record of any previous criminal record of the defendant.

In addition, the prosecution counsel informed the court that in the course of investigation, it recovered

1. iPhone 2 & 7 plus being used in the commission of the crime.
2. Furthermore, that the convict is yet to retribute the sum of \$150 (one hundred and fifty dollars) he defrauded the victim one Mr Timothy Vincent and urge the court to make an order for the convict to retribute same to the Federal Government of Nigeria through the EFCC.

I have carefully listened to the plea of mitigation of punishment by the defendant and the defence counsel, it is clear from the record of EFCC that the defendant is a first time offender and have no previous criminal record against him whatsoever.

The defence counsel urge the court to apply section 270(11) (b) the section provide thus:

“where a defendant has been convicted under subsection (9) (c), the presiding judge shall consider the sentence as agreed upon and where he is.

(b) Of the view that he would have imposed a lesser sentence than the sentence agreed, Impose the lesser sentence

On this I beg to disagree with the defence counsel on this, reasons being that the section is only applicable where there is a plea bargain where the defendant and the prosecution has agreed on an agreement and same filed before the court.

In the instant case there is nothing placed before the court for the court to invoke the provision of section 270(11) (b) of the ACJA 2015. I so hold.

In the absence of such I shall use my discretion to sentence the convict based on the plea of allocutus (mitigation of punishment on the following grounds.

1. The convict is a first time offender.
2. The convict has no previous record of crime conviction against him.
3. The defendant/convict is still a teenager based on the forgoing this court will consider to give a non-custodian sentence by placement the convict in a restricted.

4. Area. This is because while imprisonment is necessary in many cases especially for very serious offences, it has not solved the problem of crime prevention or the socialreintegration of offenders.
5. In view of the application make by the prosecution I shall invoke the provision of section 321(a) of the ACJA 2015. The section provides thus:

“A court after conviction may adjourn proceedings to consider and determine sentence appropriately for each convict.

 - a. In addition to or in lieu of any other penalty authorised by law, order the convict o make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim’s estate...”

This court is alsoinclined to consider suspended sentence in accordance to section 460(1)(4) of the ACJA 2015. The section provides thus:

460(1)

Notwithstanding the provision of any other law creating an offence, where the court may see reason, the court may order that the sentence it imposed on the convict be, with or without condition, suspended in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension.

Subsection (4)

“The court in exercising its power under subsection (1) or (2) of this section shall here regard to the need to

- a. Reduce congestion in prisons.
- b. Rehabilitate prisoners by making them to undertake productive work and
- c. Prevent convicts who commit simple offences from mixing with hardened criminals

In view of the forgoing therefore I make the following order(s).

1. The sum of \$150 (one hundred and fifty dollars to one Timothy Vincent through the office of the EFCC to be forward to the embassy of the victim country.

2. The iPhone 2 & 7 plus recovered from the convict being commission of the crime is hereby forfeited to the FGN. The said item to be sold and the proceed realize paid to the account of the FGN.
3. The convict to enter a bond to be of good behaviour for a period of one year, same signed by one of either of his parent.

This is my ruling

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Hon. Justice A. Y. Shafa