IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: YEBOAH, JSC PRESIDING

BAFFOE-BONNIE, JSC

GBADEGBE, JSC

AKOTO-BAMFO, JSC

PWAMANG, JSC

CRIMINAL APPEAL

NO. J3/8/2016

29TH MARCH, 2017

JOEL MEJIA DUARTE MOISES @ JOEL MELIA -- APPELLANT

VRS

THE REPUBLIC -- RESPONDENT

JUDGMENT

GBADEGBE JSC:-

On 29 March, 2012 the Court of Appeal confirmed the conviction and sentences imposed upon the appellant herein by the High Court Accra on 13 April 2007 for the offences of conspiracy to import narcotic drugs,

importation of narcotic drugs, conspiracy to possess narcotic drugs and possession of narcotic drugs. The appellant claiming to have been aggrieved by the said orders of the CA appealed to us in the exercise of his unfettered constitutional right praying for a reduction of concurrent sentences of 25 years IHL on each of the three counts he was charged with. In the notice of appeal originating these proceedings filed pursuant to leave granted by the CA, the appellant urged the following grounds

1. The appellant on the basis of his reformed character and being a first offender humbly prays for reduction of the sentence.
2. The appellant has learnt valuable lessons for the ten (10) years period served in prison and his life has undergone a tremendous positive reformation.
3. The appellant's health condition is deteriorating, having been diagnosed for optic cancer and other health complications.

From the grounds of appeal filed by the appellant in these proceedings, the only question for our decision is whether the sentence imposed on him by the trial court and affirmed by the CA are harsh and not justified having regard to the circumstances of the offence and the offender as have been reiterated in a collection of cases dealing with the correct approach to sentencing. Reference is made to the case of Kwashie v The Republic [1971] 1 GLR 488, a case which was considered by the learned justices of the CA in the judgment which is on appeal to us. It repays to state that in

their consideration, the learned justices of the CA at page 22 of their very well-reasoned judgment which appears at page 383 of the record of appeal in this matter, painstakingly made reference to what we consider to be the applicable factors in determining the nature of sentence to be passed by a court of competent jurisdiction after conviction and we wish to say without any reservation that there cannot be any legitimate ground of complaint in respect of their approach to the question of sentence at all. The invitation pressed on us by the appellant concerns matters which from the grounds of appeal to which reference was made earlier in this delivery are unrelated to the nature of the offence and the circumstances of the offender as at the time of the commission of the crime.

The grounds of appeal in these proceedings are quite frankly irrelevant to a determination as to the severity, harshness or unreasonableness of a sentence of imprisonment imposed by a court on an appellant as they do not raise any issue that is in its nature mitigating circumstances which we might take into account in reducing the sentences imposed on the appellant. We are of the opinion that the matters raised in the three (3) grounds of appeal are properly speaking not grounds of appeal at all as they do not in relation to an appeal against sentence direct our minds to any of the known grounds on which an appellate court and indeed, the final appellate court might intervene to reduce a sentence. We think that the matters alluded to in the said grounds belong to a purely administrative or executive process that might be initiated in the nature of a remission of

sentence, a process that is quite distinct and separate from the exercise by us of a judicial function.

Dealing with the said matters, we are of the view that learned counsel for the Republic/Respondent, the learned Chief State Attorney was right when she invited us by reference to the case of R v Bernard [1977] 1 CR App R (S) 135 not to yield to the contention of the appellant. We are of the opinion that if the matters raised in the grounds of appeal before us were to be legitimate factors that might weigh on the minds of appellate courts in determining the question of sentence to be passed on a convicted person, it would undermine the settled practice of courts that the question of the appropriate sentence is one for the trial court and undermine the authority of trial courts who are primarily seised with the relevant factors that can be utilized in sentencing. But that is not all. It would also while seeking to exercise an appellate jurisdiction, provide appellate courts with matters outside the scope of trial courts which can be taken into account in passing sentence and render the nature of the appellate jurisdiction, quite unconcerned with the facts and circumstances which might have formed the basis of the sentence imposed upon an appellant. Additionally, the question arising from such purely factual matters which are extraneous to the record of appeal on which the appeal herein is based, is how does the court verify such self-serving matters which were contained in a grounds of appeal settled by the appellant himself?

As the sentences have not been proved to be improper or unwarranted, we reject the invitation contained in the grounds of appeal and dismiss the appeal therefrom. In the result, we affirm the sentence of 25 years IHL imposed by the trial court and affirmed by the learned justices of the CA.

(SGD) N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

(SGD) ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

(SGD) P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

(SGD) V. AKOTO BAMFO
(JUSTICE OF THE SUPREME COURT)

(SGD) G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

OLIVER ATSU ABADA FOR THE APPELLANT

ASIAMAH SAMPONG (CHIEF STATE ATTORNEY) FOR THE RESPONDENT