

CHITALU v THE PEOPLE (1967) ZR 50 (HC)

HIGH COURT

WHELAN J

10th MARCH 1967

Flynote and Headnote

[1] Criminal 35 procedure - Sentencing - Computation of time - Time in prison after conviction and prior to sentence - Accused at fault for delay.

The magistrate correctly refused to take into account, in computing the running of the accused's two - year sentence, the three months that the accused was in custody after conviction and prior to sentence when the delay was caused by the accused's refusal to allow his fingerprints to be taken for purposes of proving prior convictions.

1967 ZR p51

WHELAN J

Appellant in person.

Chandran, State Advocate, for the respondent

Judgment

Whelan J: On the 17th October, 1966, before the subordinate court of the first class for the Kitwe District the appellant was convicted of the theft of a motor car valued at £797 and on the 21st January, 1967, 5 was sentenced to two years' imprisonment with hard labour. He appeals to this court against his sentence.

[1] He complains that the learned resident magistrate did not take into consideration the time he had been in custody after conviction prior to sentence. This delay of three months was occasioned by the fact that 10 the appellant refused to allow his fingerprints to be taken in order that his previous convictions, of which he had a very large number, might be proved. The appellant also draws this court's attention to the fact that he pleaded guilty. This is not so. He had originally pleaded guilty to conversion not amounting to theft but all along maintained that he did 15 not intend to steal. Prior to sentencing the appellant, the learned magistrate mentioned that the appellant had asked that the time spent in custody be taken into consideration, and noted on the record that he "had explained to the accused that he could properly take into consideration only the period of one month from the date of the accused's arrest until 20 his conviction and that thereafter the delay was due entirely to the accused's own refusal to co - operate with the police in allowing his finger prints to be taken for strict proof of his conviction." I quite agree with that view.

As to the sentence of two years. The appellant has a shocking record 25 of matters involving theft and, whilst he is not again to be punished for his previous convictions, it is to my mind

apparent that the public require a rest from his criminal activities. His appeal against sentence is dismissed.

Appeal dismissed