052)

SCSL-12-02-T
(536-550)

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before:	Justice Teresa Doherty, Single Judge, Trial Chamber II
Registrar:	Binta Mansaray
Case No.:	SCSL-12-02-T
Date:	Rendered 8 February 2013 Filed 14 February 2013

INDEPENDENT COUNSEL

v.

Prince TAYLOR

PUBLIC

SENTENCING JUDGEMENT

Independent Counsel:
William L. Gardner
Benjamin Klein

Counsel for the Accused:
Rodney Dixon
Hassan Sherry

I, Justice Teresa Doherty, acting as Single Judge of Trial Chamber II of the Special Court for Sierra Leone ("Special Court");

RECALLING the oral judgment rendered on the 25 of January 2013 convicting Prince Taylor of 5 counts of knowingly and wilfully interfering with the administration of justice of the Special Court of Sierra Leone, contrary to Rule 77(A)(iv) and the written judgement filed on 11February 2013 ("Judgement")[1];

NOTING the "Sentencing Recommendations" filed by Independent Counsel on 13 January 2013 ("Sentencing Recommendations")[2] in which the Independent Counsel incorporates by reference his sentencing recommendations in the matter of the *Prosecutor v. Senessie*[3] and the amicus brief of the Prosecutor in the matter of *Prosecutor v. Senessie*[4]

NOTING the "Defence Submission for Sentencing Hearing" filed by Defence Counsel on 6 February 2013[5] ("Defence Submissions");

RECALLING that on 8 February 2013, I rendered an oral judgment in this matter;

COGNISANT of the provisions of Articles 17 and 19 of the Statute of the Special Court for Sierra Leone ("the Statute") and of Rules 77, 100 and 101 of the Rules of Procedure and Evidence ("Rules");

DO HEREBY RENDER my decision as follows:

BACKGROUND

1. Prince Taylor ("the Defendant" or "Taylor") was convicted after a trial of five counts: four of otherwise interfering with a witness who has given evidence in proceedings contrary to Rule 77(A)(iv); and one count of interfering with a witness about to give evidence in proceedings. The background is more fully set out in that judgement..

[1] *Independent Counsel v. Prince Taylor*, Judgement in Contempt Proceedings, SCSL-12-02-PT-51 ("Judgement").
[2] Sentencing Recommendation, SCSL-12-02-PT-47.
[3] *Amicus Curiae* Brief, SCSL -2011-01-T-16.
[4] Sentencing Recommendations, SCSL-2011-01-T-16, para. 3.
[5] Defence Submissions for Sentencing Hearing, SCSL-12-02-T-50.

SUBMISSIONS

Prosecution Submissions

2. In his sentencing recommendations, the Independent Counsel states that "any analysis of an appropriate sentence for the Defendant should start with a bench mark".[6] He submits that there are several possibilities and refers to the Prosecutor's *Amicus Curiae* brief ("Amicus Curiae brief") which sets out a comprehensive review of the jurisprudence and sentences in cases relating to contempt in the international tribunals.

3. The Prosecutor reminds me that Article 19 of the Statute obliges the Court to have recourse to the practice regarding sentencing in the International Criminal Tribunal for Rwanda ("ICTR") and the National Courts of Sierra Leone. I have not been referred to case law relating to the National Courts of Sierra Leone. The Prosecutor submits in her amicus brief that in cases of contempt it is particularly important that the sentence adequately serve the dual purposes of retribution and deterrence.[7]

4. She also submits that the Court should consider the gravity of the offence, the individual circumstances of the contemnor and other aggravating and mitigating circumstances.[8] She adds that every case has a multitude of variables.[9] The Prosecutor further submits that imprisonment is the only adequate penalty for offences in contravention of Rule 77(A)(iv) as the maximum fine applicable is inadequate for retributive or deterrent purposes. The Prosecutor states that the gravity of the offence dictates both the type of penalty and the length of sentence. Aggravating factors must be proved beyond a reasonable doubt, mitigating factors on a balance of probabilities, but that the weight to be assigned is a matter of discretion for the Court.[10]

5. Aggravating factors include the background and the former position of the contemnor, other reprehensible behaviour, expected or active financial gain from the conduct, the

[6] Sentencing Recommendations, para. 4.
[7] Amicus Curiae Brief, para. 7.
[8] Amicus Curiae Brief, para. 9.
[9] Amicus Curiae Brief, para. 10.
[10] Amicus Curiae Brief, para. 24.

vulnerability of the witnesses, lack of remorse and the indication of the intention or continued acting in contempt of court.[11]

6. Mitigating factors are: a guilty plea; current and past cooperation with the Court; remorse which the Court accepts is genuine; good character; lack of a prior record or criminal record or criminal behaviour; pressures from superiors and demonstrated reluctance to commit contempt of court; apology to witnesses; attempts to rectify one's own doing and or mitigate the effects by voluntary appearance; a demonstrated commitment to international justice; good faith or reliance on Counsel. Family or personal circumstances have been given limited weight in consideration of a sentence.[12]

7. Independent Counsel submits that in the matter of *Independent Counsel v. Senessie*, the Court, although aware of his submissions that a sentencing bench mark of five to seven years was appropriate, reduced its intended sentence in the light of Senessie's eleventh hour confession and expression of remorse. In comparison, there is no such acknowledgement of guilt in the instant case.[13]

8. He further submits that the critical aggravating factor in this case is the combination of the Defendants' professional and personal experience and that he is a well educated man from a good family who has served the Special Court for approximately 7 years as an investigator. It is, however, precisely because of this background that the Defendant knew so well that he was acting improperly and illegally when he asked Senessie to approach the Prosecution witnesses. His knowing violation of the law is not insignificant; he acted in a case involving "some of the most heinous and brutal crimes recorded in human history".[14] Counsel submits that there are no obvious mitigating factors, that this is one important aggravating factor.[15]

9. Independent Counsel recommends a sentence of 4-5 years incarceration on each count to be served concurrently together with the maximum fine permitted under the rules which, at the relevant time, was two-million leones.

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[11] Amicus Curiae Brief, para. 25.
[12] Amicus Curiae Brief, paras 26-27.
[13] Sentencing Recommendation, paras 4-5.
[14] Sentencing Recommendation, para. 7.
[15] Sentencing Recommendation, para. 6.

Defence Submissions

10. Defence Counsel notes that the Defendant has been convicted of 5 of the 9 counts of "otherwise interfering with a witness" who has given evidence before the Special Court through instructions to Eric Senessie. Counsel stresses that Taylor was acquitted of all counts of offering a bribe to witnesses.[16]

11. He stresses that the Court found Senessie's evidence of a payment of $500 promised to him by the Defendant was not credible. In contrast, the Trial Chamber found that Senessie had offered money payment and relocation to the same witnesses in his own trial.[17]

12. Defence Counsel submits, at length, that having been acquitted of all the bribery counts, it follows that Senessie acted on him own accord and was without instruction or influence from Taylor. In this regard, Counsel submits that bribery has been designated as a particular form of interference with witnesses and submits that "on any view, his specific conduct, although serious" (on the findings of the Chamber) must be considered as less serious than the forms of interference specifically proscribed by Rule 77(A)(iv).[18]

13. Counsel submits that Taylor was also convicted of otherwise interfering with Senessie by instructing him to give false information to the Independent Prosecutor and notes that Senessie could have been prosecuted for providing false information. He submits that although evidence was presented of many contacts and meetings between Taylor and Senessie, he can only be punished for the period provided in the indictment *viz* on or about 26 March 2011 to 6 April 2011.[19]

14. He submits that there are mitigating factors on behalf of Mr. Taylor – his previous good character with a "spotless record in his professional work and life generally"; there was cogent evidence to this effect during his trial which was admitted by consent.[20] Counsel submits that the Court should "have in mind" the sentence imposed on Senessie to ensure a measure of consistency but acknowledges that the Court took into account his

[16] Defence Submissions, paras 2-3.
[17] Defence Submissions, para. 6.
[18] Defence Submissions, paras 10-12.
[19] Defence Submissions, para. 13.
[20] Defence Submissions, para. 15.

statement of guilt and remorse. However, he distinguishes other matters applicable to Senessie.[21] Counsel submits that for all of the foregoing reasons, Taylor should not receive any higher a sentence than Senessie as aggravating factors which may be said to apply to Taylor's case have also been found to apply in Senessie's.

15. The narrower scope of Taylor's participation in the unlawful conduct militates towards a lower sentence for Taylor. The actual interference with witnesses in the administration of justice is more severe when bribery is employed, and that must be reflected in the sentence imposed.[22] Mr. Taylor's position as an investigator in the SCSL which was "so integral to the allegations of interference put by the Independent Counsel and established by the Chamber should not be regarded as an aggravating factor".[23] There are no grounds for adopting Independent Counsel's submission that a person of a higher caste warrants a heavier penalty and it should not be accepted, as the Court has to apply the same standards to all persons who come before it.[24]

APPLICABLE LAW

16. Article 19 of the Statute states:

> **Penalties**
>
> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
>
> 3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

[21] Defence Submissions, paras 17-18.
[22] Defence Submissions, paras 21-22.
[23] Defence Submissions, para. 23.
[24] Defence Submissions, para. 25.

17. Rule 101 of the Rules states:

> **Penalties**
>
> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
>
> (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.
>
> (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
>
> (D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

18. Rule 77 Contempt of the Special Court states:

> [...]
>
> (G) The maximum penalty that may be imposed on a person found to be in contempt of the Special Court pursuant to Sub-Rule (C)(i) shall a term of imprisonment not exceeding six months, or a fine not exceeding 2 million leones, or both; and the maximum penalty pursuant to Sub-Rule (C)(iii) shall be a term of imprisonment for seven years or a fine not exceeding 2 million leones, or both.

DELIBERATIONS

19. The Defendant did not speak at the sentencing hearing but called his father, Joe Ben Taylor ("Mr. Taylor, Sr."), as a witness.

20. Mr. Taylor, Sr., an elderly man of great dignity, is 80 years old. He testified that he resides in Bo and his home is shared with the Defendant's family of 3 children, including the

Defendant's youngest son, a handicapped 10 year old who needs special care and medication. There are also an unspecified number of wards.

21. The Defendant is the "backbone" - the breadwinner and provider for the family - and, while employed by the Special Court, also maintained his father who also has health problems. He arranged and paid for medication and medical attention at hospital.

22. The Defendant took over the cabinet making and carpentry workshop and business that Mr. Taylor, Sr. had started after he retired as a teacher. The management, debt collection and all other matters relating to the business were within the control of the Defendant. He knew the debtors and suppliers and had the capacity to pursue these as Mr. Taylor, Sr. is no longer physically able to pursue them.

23. As a result of these charges in this case and the Defendant's arrest, the business is now dwindling and is almost closed and the sole income of the family is Mr. Taylor Sr.'s pension and an annual rent from the adjoining property. Together, these are not enough to maintain the family.

24. The Defendant has an active role in the community and religious life of the Bo community. Since the Defendant's arrest, the family's standing in the community has deteriorated. Mr. Taylor, Sr. has 2 other children, they do not live in Bo and do not have any means to assist or maintain the family in Bo.

25. He agreed in cross-examination that the Defendant worked for seven years for the Special Court, but was unaware if the Defendant sought other employment thereafter or if he sought a reference from the Lead Counsel for the Charles Taylor Defence team. He asked the Court to exercise mercy on behalf of his son. I note in passing that the Defendant appeared touched by his father's evidence.

26. Both Counsels made further submissions following the evidence. Independent Counsel stressed that, whilst not without sympathy for the Defendant's family, criminal activity imposes hardship "all over the world". The Defendant hatched the plan to contact the witnesses, he masterminded it and this in itself warrants a substantial sentence. Furthermore, he still has not accepted responsibility.

27. Independent Counsel submits that, whilst the Defence may put an emphasis on the Defendant's acquittal on the counts of bribery, the Defendant only avoided these by a hair and the interference was serious. The submission that the time specified in the indictment for Count 9, which may be eleven days, misses the significance of that charge. The Defendant's lies and Senessie's lies misled the investigator and resulted in two trials stretching over two years at a time when Special Court was winding down. The truth in 2011 would have avoided this.

28. Defence Counsel noted that Senessie was convicted of interfering witnesses by bribing them and his actions did not justify fighting a trial. Whereas, the Defendant is vindicated of contesting the charges as he was acquitted of the counts involving bribery. Counsel stressed the acquittal and the difference between Senessie's convictions and those of the Defendant several times in the course of his submission. Submitting that this warrants a sentence that is not higher than Senessie and should be less than half of the sentence imposed on Senessie. The Defendant also did not challenge the five complainant witnesses or make the kind of serious allegations about them that Senessie did. He only challenged Senessie's credibility.

29. Counsel referred to particulars in the evidence in support of that submission. Senessie may have shown remorse but it was in the last moment. Counsel noted that the adjudicated facts showed that the offers made by Senessie to the five complainant witnesses named the Taylor Defence Team and so must have been on Senessie's own initiative. Whilst all interfering is serious the conduct involved with "otherwise interfering" he submits, must be on "a lower scale" than other forms of interfering named in Rule 77, such as threatening or bribery.

30. Adding a bribe, as Senessie did, makes his offences more serious than those of which the Defendant was convicted. Counsel further submits that the Court also found that Sennessie was persistent in his behaviour, which was an aggravating factor. Senessie was not sheep-like, as he presented himself. He must have thought some of this behavior up and the Court did not make any finding that bribery was a foreseeable outcome of the Defendant's instruction.

31. The issue of the Defendant's position, whilst it may be an aggravating factor in itself, is also a "double edged sword", and this is not a situation of command responsibility. Senessie used his own status and experience within the community, therefore, there can be no distinction between him and the Defendant.

32. Defence Counsel further points to the Defendant's prior good character, integrity, hard work and dedication while an investigator of the Special Court for two Defence teams as a mitigating factor. He asks the Court to also take into account and have sympathy with the hardship that a custodial sentence will cause the defendant's family, as he is the only one who can support them. A lower sentence is proportionate in the circumstance.

33. In relation to Count 9, Counsel submits that the Court could only have regard to the time period in the indictment and that Independent Counsel's analogy that the Defendant is of a higher caste is not a valid one. Counsel also referred to precedents from the ICTY on sentencing for contempt, including bribery.

34. I note at the outset that the Defendant was convicted under Rule 77(C)(iii).

35. As noted in the case of *Prosecutor v Senessie*, the Prosecutor's *Amicus Curaie* brief reminds me of the duty under Article 19 of the Statute to have recourse to the practice regarding sentencing the International Criminal Tribunal for Rwanda ("ICTR") and the National Courts of Sierra Leone.

36. No information or submission in relation to the National Court for Sierra Leone was made, and I recall that a statement was made in another trial that noncustodial sentences were imposed for contempt in the National Courts, but no precedents have ever been submitted to this Court.[25] I, therefore, consider that I have no record of the practice in the National Courts of Sierra Leone that will enable me to compare or consider them in the instant case.

37. I also note that the Prosecutor, in her *Amicus Curiae* brief, stresses retribution and deterrence as matters to be considered in sentencing.

[25] *Independent Counsel v Bangura, et al*, Sentencing Judgment, SCSL-11-02-T-71.

38. I note, as I did in the *Prosecutor v. Senessie,* that contempt is not a crime against humanity or a war crime or a crime against international humanitarian law and, therefore, consider rehabilitation is also a matter I am entitled to consider and do consider when sentencing in this case.

39. Having considered the submissions, particularly those of the Defence in relation to the bribery counts and of the Prosecutor in relation to the time factor in Count 9 and the outcome of the influence and persuasion used to achieve Senessie's compliance with the instruction not to speak to the investigator - I consider that there are two distinct scenarios in the counts and the evidence before me that led to those convictions.

40. Firstly, there is the interfering with witnesses by instruction to Senessie. Secondly, there are the separate facts of influencing Senessie not to tell the truth to the investigator. This may have followed from the interference, but it has a distinct and unrelated set of facts that did not form part of the interference with witnesses and, thus, is distinct from it.

41. In his submissions, Defence Counsel strives forcefully to distinguish the Defendant's and Senessie's actions. He states that Senessie made serious allegations against witnesses, used his position as a leader in the community and knowledge of witnesses to pursue the crimes and offered money and relocation, the foundation of his guilt of bribery. Counsel submits that Senessie's actions are, therefore, more serious.

42. I consider that the crime is interfering with witnesses and that Rule 77(A)(iv) describes forms of interference as, *inter alia,* bribery and threatening, but makes no hierarchy of how much more or less serious the offence is if bribery is used. The same penalty applies to all forms of offence under Rule 77(A)(iv). Each offence must turn of its own facts, and I do not consider that there is some implied hierarchy of more or less seriousness either on legal provision of the Rules or on the facts in this case.

43. Defence Counsel also emphasizes the acquittal of the Defendant of bribery and states that this vindicates his trial and, in this regard, he did not trouble the five complainant witnesses to come to Court and give evidence. He only challenged Senessie's credibility. Indeed he did challenge it, with vehemence, over two days.

44. Independent Counsel submits that the acquittal on bribery was only by a hair's breadth. The acquittal on the bribery counts do not mean that money was not mentioned. I have found that the mention of $500 was not previously stated by Senessie and was not corroborated. This was a credibility issue.[26] However I found that the instruction emanated from the Defendant.

45. Money did, however, come into this case, as Senessie said, "nothing is for nothing" and he showed an awareness that the scheme would need funding. There was a payment of Le200,000 paid on 1 February 2011 and, given the date of payment and the date of the invitation letters of 10 February 2011, these were not related as was put in cross-examination.

46. I accept, and I do not resile, from the fact that the acquittal remains as an acquittal, but the instruction to Senessie to approach the five complainant witnesses was given by the Defendant and he was persistent. He phoned to follow-up his initial instructions, even though at that point Senessie had done nothing and, at that point, it could have gone no further. The Defendant had knowledge of the Court and its systems, something Senessie continuously repeated in evidence, and which I was satisfied influenced Senessie. That misuse of his knowledge and training started the scheme to interfere with the five complainant witnesses and was instrumental in carrying it on until complaints were laid by them to the Office of the Prosecutor. I find no good legal reason for holding – as put by Defence – that on the facts the Defendant should have any less of a sentence for interfering than Senessie.

47. On the issue of the time frame in Count 9, I accept and agree that the period specified in the indictment is the only period which the Court must consider. The fact remains, however, that the effect of that influence and persuasion led to Senessie not telling the truth to the investigator, thus, the truth was suppressed and two trials, both involving overseas counsel and lengthy evidence ensued.

48. I accept fully that the onus of proof never leaves the Prosecution and the accused has a right to be tried. Furthermore, the European Court of Human Rights ("ECtHR") has

[26] Judgement, para. 211.

held that cost is not a valid excuse to curtail justice. It is, however, abundantly clear now that these trials were totally unnecessary and a great deal of expense and time were unnecessarily spent. The fact remains that there was a trial – a hard fought trial – and that is usually an aggravating factor that warrants a heavier sentence. In the instance case, I consider too that the Defendant's behavior in persisting, by assuring Senessie that there would be no trial – that it would be dismissed – is an aggravating factor. He contributed to this by use of such terminology as "*sine die*". Senessie believed and did not admit the truth, not only to the investigator, but he did not admit it in trial. This is also an outcome of the Defendant's instructions.

49. I consider that the instruction and the influence on Senessie not to tell the truth indicates a very serious crime. The opportunity to pause, to say "Let us face it, we've done wrong", was there. There were opportunities to admit it, but none of those opportunities were taken. I find that this is an aggravating factor warranting a heavier sentence.

50. Counsel has put that the Defendant did not make any serious allegations about the witnesses, in contrast to Senessie. He did, however, suggest that the Principal Defender might have connived with the Prosecution. He also, as has been stated in the Judgement, abused his knowledge to influence Senessie and perpetrate the crimes. Whilst he is not any more superior as a person, he has used his knowledge and experience and I consider this an aggravating factor.

51. In mitigation, I accept that the Defendant had a very fine record of work, as is shown by the several recommendations that were tendered in evidence in this Court. His excellent support of his family and, from his father's evidence, the loss of that employment, has had a bad effect on his family. I have no doubt that the Defendant was very aware of the great needs of his dependant children and parent. I accept that he has not been in trouble before or been convicted of any offence. He is a man of standing in the community and in the church community, and his father has testified to the loss of family status in that community. This must be a great blow to his family. Independent Counsel has said that the suffering of families happens when there is criminal activity. That is true, but it does not make it any easier on the individual family circumstances.

52. As against this, as I have noted, there has been a trial by this defendant, and his activity led to Senessie's trial. His activities were instrumental in having the complaints laid by five complainant witnesses and brought before this Court,. I can find no good legal reason for holding, as has been put by the Defence, that on the facts, the Defendant should have any less of a sentence for interfering than Senessie.

53. A trial is taken as an indicator of a lack of remorse; however, I do not go so far as to say that there was no lack of remorse as his father has asked for mercy. The message, however, must be clear and it must be emphatic: justice can only prevail when witnesses can speak out without fear or favour. That must be upheld and enforced. Although it is totally irrelevant in the sentencing, I am reminded that the Truth and Reconciliation Commission in this country found defects in the justice system as contributing to the war in Sierra Leone. It is a reminder to us all of the need to uphold the justice system.

54. I consider that Count 9 warrants a deterrent sentence. I do not lose sight of the submissions by Independent Counsel that the benchmark of three to four years is pertinent, despite an earlier submission that five to seven years would be relevant for counts of interfering with witnesses.

55. I also bear in mind the comparators that have been put before me by Defence Counsel from other tribunals. On the facts before me, I consider that a sentence of two and a half years for Count 9 will fulfill the deterrent, retribution and the rehabilitation aspects of a sentence, and accordingly, I sentence to two and a half years on count 9. Notwithstanding Defence Counsel's very persuasive plea relating to comparisons with Senessie, I have weighed up the fact that there are aggravating and mitigating factors. I particularly note, as Independent Counsel has said, that Senessie showed remorse, and that had an effect on his sentence. I, however, take into account the good record of the Defendant, his contribution to the community, and his contribution to the justice system in this Court. For that reason, I do not give a heavier sentence on the counts relating to interfering with witnesses, as submitted by Independent Counsel. Independent Counsel has also submitted that a fine should be levied. From the evidence I conclude that a fine would have a very detrimental effect on the Defendant's family as all indications are that they

would have to pay it. In these circumstances I do not believe that a fine would have a deterrent, retributive or rehabilitative effect on the Defendant.

56. In relation to each of these counts, I impose the following penalty:

Count 2: Two years' imprisonment;

Count 4: Two years' imprisonment;

Count 7: Two years' imprisonment;

Count 8: Two years' imprisonment;

Count 9: Two and a half years' imprisonment.

57. Each term is to be served concurrently, notwithstanding, that I consider the interfering with witnesses by instructions to Senessie and interfering with Senessie, a potential witness are two distinct and different scenarios that could warrant consecutive sentences. The period spent in remand is to be deducted from the sentences.

Done at Freetown, Sierra Leone, this 8th day of February 2013 filed the 14th day of February 2013.

Justice Teresa Doherty
Single Judge

[Seal of the Special Court for Sierra Leone]