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SCSL-12-02-T
(471-479)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Single Judge
Single Judge, Trial Chamber II

Registrar: Ms. Binta Mansaray

Case No: SCSL-12-02-T

Date filed: 6 February 2013

THE INDEPENDENT COUNSEL

V.

PRINCE TAYLOR

PUBLIC

DEFENCE SUBMISSIONS FOR SENTENCING HEARING

Independent Counsel:
William L. Gardner

Counsel for Prince Taylor:
Rodney Dixon

Introduction

1. Pursuant to the Chamber's Scheduling Order of 30 January 2013, the Defence files this submission for consideration in the determination of an appropriate sentence. The Defence will present its full submissions in respect of sentencing at the hearing scheduled for 7 February 2013, including the evidence notified to the Chamber on 4 February 2013. The Defence requests that the present filing is considered with the oral submissions made on behalf of Mr. Prince Taylor at the sentencing hearing and the evidence to be presented.

The verdict

2. Mr. Taylor has been convicted of 5 counts of "otherwise interfering with a witness" who had given evidence before the SCSL or who was about to, through instructions to Mr. Eric Senessie (namely, Counts 2, 4, 7, 8 and 9). The Chamber found that Mr. Taylor "otherwise interfered" with four Prosecution witnesses, Mohamed Kabba, TFI-274, TFI-585, and Aruna Gbonda (not TFI-516, for which he was only charged with bribery), and with Mr. Senessie by instructing him to give false information to the Independent Counsel on or about 26 March to 6 April 2011.

3. Mr. Taylor was acquitted of all counts of offering bribes to witnesses who had given evidence before the SCSL through instructions to Mr. Senessie (namely, Counts 1, 3, 5, and 6).

4. The Chamber found that Mr. Senessie's evidence that a payment of $500 was promised to him by Mr. Taylor "not to be credible" and went on to hold in the Judgment that:

> *"Senessie said he told the complainants they would get something if they conformed to the request to return to The Hague. The term he used at least twice in his evidence is "nothing is for nothing", but I can find no evidence that that the promise to pay something came out of the words that Senessie attributed to the accused.*
> *The witnesses mentioned relocation. I cannot identify in the evidence before me that the accused offered any relocation or instructed Senessie to make an offer of relocation. Accordingly, I do not consider there is sufficient evidence*

to base a finding of interference with the administration of justice by offering a bribe to the five witnesses who had given evidence in The Hague."[1]

5. Mr. Senessie had claimed in his evidence that "It was Prince Taylor's words" and that Mr. Taylor instructed him to offer rewards to the witnesses[2], but his evidence in this regard was not relied on by the Chamber, and hence Mr. Taylor was acquitted of all of the bribery counts.

6. As found by the Chamber in Mr. Senessie's trial, the witnesses had been offered money, payments and relocation (including living in another country) by Mr. Senessie.[3] The Chamber, however, found in Mr. Taylor's trial that he had not instructed Mr. Senessie to offer any of these bribes in any of the forms as described by the five witnesses.

7. As noted above, the Chamber also found that Mr. Senessie was not a credible witness in his claims that he had been promised $500 by Mr. Taylor to contact the witnesses.

Factors and circumstances to be taken into consideration

8. It is significant that Mr. Taylor has been acquitted of all of the bribery charges, while Mr. Senessie was convicted of these charges in addition to the "otherwise interfering" charges (8 counts in total).

9. On the Chamber's own findings in Mr. Taylor's Judgment, Mr. Senessie was not instructed by Mr. Taylor in any way to seek to bribe any of the witnesses. It follows that given that Mr. Senessie is convicted of bribing the witnesses he must have acted on his own accord, independently, and without any instruction or influence from Mr. Taylor when he took the various steps of seeking to bribe the witnesses with money and promises of relocation, as described by them in their testimonies (which were admitted into evidence in Mr. Taylor's trial).

10. Bribery has been designated as a particular form of interference with witnesses in Rule 77(A)(iv), as has "threatens", "intimidates", and "causes any injury". The

[1] Transcript of Judgment at hearing on 25 January 2013, p. 691.
[2] Trial transcript of 14 January 2013, p. 99. Also see reference in the transcript of the Judgment to this testimony, Transcript of hearing on 25 January 2013, p. 644.
[3] See paras. 19, 23, 43, 47, 66, 74, and 79 of Judgment in *Prosecutor v Senessie*, 16 August 2012, SCSL-11-01-T-267-296.

construction of this provision singles out these specific forms of interference, signifying their particular seriousness. As has been held before the ICTY, "the intimidation of witnesses is particularly grave".[4]

11. Bribery has been accorded a specific definition in the case law as "an inducement offered to procure illegal or dishonest action or decision in favour of the giver. It is also defined as a price, reward, gift or favour bestowed or promised with a view to pervert the judgement of or influence the action of a person in a position of trust".[5] While "otherwise interfering with" witnesses has been held to be an expression which covers other conduct not specified in the Rule and is a phrase "that adds to these specifically provided acts any conduct that is likely to dissuade a witness or a potential witness from giving evidence, or to influence the nature of the witness' or potential witness' evidence".[6]

12. The fact that Mr. Taylor has not been convicted of using threats, intimidation, causing injury, or bribery to interfere with witnesses is relevant to the determination of his sentence. He is convicted of instructing Mr. Senessie to contact four witnesses to seek to get them to recant their testimonies. On any view, his specific conduct, although serious (on the findings of the Chamber), should be considered as less serious than the forms of interference specifically proscribed by Rule 77(A)(iv).

13. Mr. Taylor is also convicted of "otherwise interfering" with Mr. Senessie in instructing him to give false information to the Independent Prosecutor. Mr. Senessie could himself have been prosecuted for providing such false information and misleading the Court at his trial. Although evidence was presented of many contacts and meetings between Mr. Taylor and Mr. Senessie in the course of the contempt proceedings, the Chamber should only sentence Mr. Taylor for the period for which he was charged and thus convicted, namely "on or about 26 March 2011 to 6 April 2011" which was the specific period prior to Mr. Senessie's interview with the Independent Counsel that is the subject of Count 9.[7]

14. As set out above, the Chamber found that Mr. Senessie's claims that Mr. Taylor promised to pay him $500 were not credible. There is hence no finding of fact that

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[4] *Prosecutor v Haraqija*, Judgment on Allegations of Contempt, 17 December 2008, para. 105.
[5] *Prosecutor v Begaj*, Judgment on Contempt Allegations, 27 May 2005, para. 18.
[6] *Prosecutor v Margetic*, Judgment on Allegations of Contempt, 7 February 2007, para. 64.
[7] See transcript of Judgment at hearing on 25 January 2013, pp. 685-687.

Mr. Taylor sought to instruct and influence Mr. Senessie through offering him any payment of $500.

15. Contrary to the Independent Counsel's submission that there are "no obvious mitigating factors", there is the fact that Mr. Taylor is of previous good character with a spotless record in his professional work and his life generally. There was cogent and corroborated evidence of his good character presented during his trial, which the Defence submits must be considered and given due weight in the determination of his sentence. This evidence is admitted as agreed evidence and the truth of its contents has thus not been challenged by the Independent Counsel.

16. Furthermore, at this trial Mr. Taylor *only* sought to challenge Mr. Senessie's evidence. He did not recall the five witnesses who had testified in Mr. Senessie's trial. He was vindicated in contesting Mr. Senessie's evidence as the Chamber acquitted Mr. Taylor of all of the bribery counts as it found it could not rely on Mr. Senessie's evidence that he was instructed to bribe the witnesses by Mr. Taylor. The Chamber also found Mr. Senessie's evidence to be unconvincing and incredible in other respects.[8]

17. The Chamber is asked to have in mind the sentence imposed on Mr. Senessie. It should be used as starting point as his case concerned similar allegations, and in order to ensure a measure of consistency of approach in applying sentencing principles in general to persons convicted of similar offences. Of course, the Chamber did take into account Mr. Senessie's acknowledged guilt and remorse, but it also had to sentence him for all of the bribery counts (on the evidence of the 5 witnesses which he strenuously disputed at trial), as is duly noted in his Sentencing Judgment.[9] These counts are not the subject of Mr. Taylor's sentence.

18. Despite the remorse which the Chamber took into account, it also took into consideration that Mr. Senessie challenged each of the witnesses at his trial, making "very serious" accusations against them.[10] This was not a feature of Mr. Taylor's defence, which focussed exclusively on Mr. Senessie's credibility.

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[8] For example, see transcript of Judgment at hearing of 25 January 2013, pp. 679-680.
[9] Sentencing Judgment, 12 July 2012, SCSL-11-01-T-186-195, para. 17.
[10] Sentencing Judgment, 12 July 2012, SCSL-11-01-T-186-195, para. 19.

19. Moreover, the finding that Mr. Taylor instructed Mr. Senessie to contact the witnesses must be viewed against the Chamber's finding that he did not instruct Mr. Senessie to bribe the witnesses. Despite the finding that Mr. Taylor initiated the contact with Mr. Senessie to give him instructions, the scope of those instruction did not reach beyond seeking contact to recant testimony and did not extend to the offering of payments and promises of relocation as an inducement.

20. There were also other aggravating factors relied upon by the Chamber in Mr. Senessie's case which are inapplicable to Mr. Taylor, including that Mr. Senessie knew the witnesses and used that knowledge and experience to commit the crimes.[11]

21. It is for these reasons (and given the submissions to be made at the sentencing hearing) that the Defence submits that Mr. Taylor should not, when balancing all of the circumstances between the two cases, receive any higher sentence than Mr. Senessie. Aggravating features which may be said to apply in Mr. Taylor's case have been found to apply in Mr. Senessie's case as well.

22. Instead, the narrower scope of Mr. Taylor's participation in the unlawful conduct as found by the Chamber in both cases, militates towards a lower sentence for Mr. Taylor. The persistent offers of money, payments and relocation to seek to induce and unduly influence the five witnesses to recant their testimonies was, on the findings of the Chamber, all undertaken solely by Mr. Senessie on his own initiative. There is clearly a difference in scale and seriousness between instructing someone to approach witnesses to ask them to recant their testimony, on the one hand, and offering them money and promises of relocation to seek to persuade them to do so, on the other hand. On these facts as found, the interference with the witnesses and accordingly with the administration of justice is more severe when bribery is employed (as it would be if the witnesses were threatened, or intimidated or injured[12]), which must be reflected in the sentence imposed.

23. The Independent Counsel argues that there is an important aggravating factor, that Mr. Taylor "knew full well he was acting improperly and illegally" because of his background working as an investigator before the SCSL. Any person, whether an investigator or not, should know that the conduct of which Mr. Taylor has been

[11] Sentencing Judgment, 12 July 2012, SCSL-11-01-T-186-195, para. 21.
[12] See footnotes 4-6 above.

convicted is serious, improper, and unlawful. It cannot be an aggravating factor that he should have known better. Any person should know better than to interfere with witnesses. It does not depend on any specific knowledge of court proceedings. As Mr. Senessie acknowledged at his sentencing hearing, which was accepted by the Chamber, there is a duty to uphold the justice system.[13] It could be said (although not relied on by the Independent Counsel) that Mr. Taylor's former position as an investigator was abused by him (on the findings of the Chamber). Mr. Taylor's position was, however, so integral to the allegations of interference put by the Independent Counsel and which have been established by the Chamber. It should not be regarded as an additional aggravating factor when it is taken into account in assessing the nature and seriousness of the crime as found by the Chamber.[14]

24. In respect of Mr. Senessie, the Chamber accepted in his Sentencing Judgment that he was a "leader" in his community, but that his position was abused, particularly because he knew the witnesses.[15]

25. There is no basis at all to regard Mr. Taylor as the equivalent of a member of "the elite Brahmin caste" and imply that Mr. Senessie should not be accorded this status in order to determine the appropriate sentence in this case. The Court can plainly never regard certain people (for elitist or any other reason) to be of a "higher caste" than others, nor apply different "ethical standards" to different persons on the basis highlighted by the Independent Counsel. This submission should be firmly rejected. The Court has to apply the same standards to all persons who come before it, irrespective of their background, in accordance with recognised international standards.

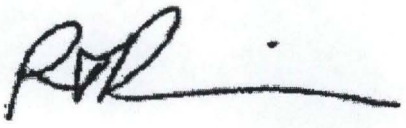
Conclusion

26. As noted above, the Defence will make its full submissions in mitigation at the sentencing hearing. The Defence respectfully requests the Chamber to take account

[13] Sentencing Judgment, 12 July 2012, SCSL-11-01-T-186-195, para. 19.
[14] As has been held by the SCSL, if a particular circumstance is an element of the underlying offence, it cannot be taken into account as an aggravating factor (see Judgment on the Sentencing of Fofana and Kondewa, 9 October 2007, para. 36). In *Prosecutor v Haraqija* (ICTY), the Chamber noted that aspects that are "inherent" to the offence of interfering with witnesses should be taken into account when assessing the gravity of the offence and not further considered as aggravating circumstances (Judgment on Allegations of Contempt, 17 December 2008, para. 107).
[15] Sentencing Judgment, 12 July 2012, SCSL-11-01-T-186-195, paras. 19-20.

of the submissions in this filing and the evidence and submissions to be presented at the sentencing hearing to determine the appropriate sentence for Mr. Taylor.

Dated 6th February 2013



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