

SUPREME COURT OF SEYCHELLES

Reportable

[2024]

CR49/2023

In the matter between:

REPUBLIC

(rep. by Ms Ria Alcindor)

Republic

and

MARCUS VICTOR

(rep. by Mr. Joshua Revera)

Accused

Neutral Citation: *Republic v Victor* (CR49/2023) delivered on 9 February 2024.

Before: A. Madeleine, J

Summary: *Possession of a Controlled Drug contrary to section 8(1) of the Misuse of Drugs Act 2016 - Sentence*

Heard: 16 November 2023 and 14 December 2023

Delivered: 9 February 2024

ORDER

The convict is sentenced under Count 2 – To a term of imprisonment for 1 year suspended for a period of 2 years and to a fine of SCR.20,000/- to be paid by 28 February 2025. In default of payment of such fine, imprisonment for 6 months.

SENTENCE

A. MADELEINE, J

[1.] The convict was charged under amended charge dated 25th October 2023 as follows –

“Count 1

Statement of Offence

Trafficking of a controlled drug, namely cannabis resin by way of possession with intent to traffic, contrary to Section 9 (1) read with Section 19(1)(d)(ii) and punishable under Section 7(1) read with the Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of Offence

Marcus Leeroy Christopher bearer of NIN 992-0096-1-1-20 of Bel Air, on 6th May 2021, at Ile du Port, Mahe, was found in possession of a total net weight of 1543.60 grams of Hashish (Cannabis resin) which gives rise to the rebuttable presumption of having possessed the said controlled drugs with intent to traffic.

Count 2 (in the alternative)

Statement of Offence

Possession of a controlled drug, namely cannabis resin contrary to section 8(1) of the Misuse of drugs Act, 2016 and punishable under the same section read with the Second Schedule of the said Act.

Particulars of Offence

Marcus Leeroy Christopher bearer of NIN 992-0096-1-1-20 of Bel Air, on 6th May 2021, at Ile du Port, Mahe, was found in possession of a total net weight of 1543.60 grams of Hashish (Cannabis resin)."

- [2.] The Convict pleaded guilty to the alternative Count, Count No. 2, of the said charge and admitted the following facts. On 6th May 2022, ANB officers received credible information of potential drug transaction at Zone 14, Ile Du Port. On arrival at the scene at around 1345 hours, ANB officers spotted a large group of people and several persons in a number of vehicles, and found several clear plastics containing a black substance. Upon seeing the ANB officers, the group of people took flight. The ANB officer apprehended the Convict who was seen dropping a piece of clear plastic containing a black substance as he ran from the scene. The piece of plastic containing the black substance was picked up by ANB officer on scene, sent for analysis, whereupon it was confirmed to contain 1543.6 grams of cannabis resin.
- [3.] The convict was therefore convicted under count 2 only, upon his unequivocal guilty plea and admission of the prosecution's facts.
- [4.] The prosecution also informed the court that the Convict is a first-time offender, whereupon the convict's counsel moved for a probation officer's report (hereinafter referred to as the "Probation Report").

- [5.] The Probation Report reveals the following circumstances of the convict. The convict is 31 years old and educated up to post-secondary level having studied carpentry at the Seychelles Institute of Technology. He is currently working 2 jobs on casual basis in a welding business (PL Steel Work) and in a waste management business (R Sea Marine Services). He has been a cannabis user since the age of 18. Both business owners confirmed that the convict works casually in their respective business and that they find him to be hard working and well behaved. One of the business owner even referred to the convict as his right hand man in that he can count on him to get work done during his absence. He further stated that the convict is disciplined at the work place.
- [6.] In mitigation, counsel for the convict begged the court for leniency of sentence. Counsel highlighted that the convict has pleaded guilty and is a remorseful first time offender. He invited the Court to take into account the circumstances in which the convict obtained possession of the cannabis resin. Namely, that the drugs were found by chance whilst removing waste at a site at Ile Du Port and that the commission of the offence was motivated by the convict's dependency on cannabis. Further, that the convict had no intention of selling the drugs but in view of his dependency, he intended to keep all of it for his own personal use. Counsel also highlighted that the convict's possession of the drugs was very short-lived as ANB officers intercepted the site, and explained that the convict ran away when the ANB officers fired or produced a pistol. Counsel urged the court to impose a suspended sentence as recommended by the Probation officer but prayed the court not to impose the probation officer's recommendation for a considerable fine as the convict only earns on average SCR.8,000/- to SCR.10,000/- monthly.
- [7.] In determining the appropriate sentence to be imposed on the convict in the circumstances of his case, I am guided by the following principles. Sentencing does not involve the mere administration of a common formula [vide *Poonoo v Attorney General (2011) SLR 423*] but it involves the human deliberation of what punishment would appropriately protect the public by deterring and preventing others from committing such offences. Also, deliberation of what sentence would appropriately provide the necessary rehabilitation, reform, and retribution for the convicted person [vide *Lawrence & Another v Republic [1990] SLR 47* and *Savy v R (1976) SLR 54*, and the necessity for proportionality.

- [8.] Counsel for the convict referred the court to other sentences imposed by the Supreme Court in similar cases which I have duly considered albeit that the quantity involved in those cases is much less than the quantity involved in the present case. In *Republic v Meftah [2020] SCSCS 751 (12 October 2020)* a sentence of imprisonment for 6 months and a fine of SCR.5,000/- was imposed for the offence of possession of 80.04grams of cannabis resin with intent to traffic. In *Republic v Fred [2020] (30 September 2020)* the convict was sentenced to a fine of SCR.30,000/- and in default to a term of 6 months' imprisonment for possession of 412.19 grams of cannabis resin with intent to traffick. In *R v. Quatre [2021] (31st March 2021)* the convict was sentenced to a fine of SR15,000 and in default to a term of imprisonment for 6 months for possession of 117.2 grams of cannabis herbal materials.
- [9.] I find the sentence imposed in *Republic v Bonnelame [2022] SCSC 1111 (19 December 2019)* to be persuasive in view of the quantity of cannabis resin involved. The court imposed a sentence of one-year imprisonment and a fine of SR15,000/-, and in default of such fine, to imprisonment to a term of 3 months for possession of 904 grams of cannabis resin.
- [10.] In the present case, I find that besides the quantity of controlled drug involved, being 1543.60 grams of cannabis resin a class B drug, there are no other aggravating factors. On the other hand, there are several mitigating factors.
- [11.] The Convict has pleaded guilty to the charge at the earliest opportunity, that is on the very first time that he was asked to take a plea in this criminal case. He has therefore saved the court's time and resources, and avoided any likely inconvenience to potential witnesses had the case proceeded to trial.
- [12.] The Convict is a first-time offender and he has shown remorse by pleading guilty. He is young and working 2 casual jobs to sustain himself in society. The Probation Report has highlighted his hardworking and helpful character as well as willingness to overcome his dependency and fully reintegrate in society. I also consider that the commission of the offence was by chance and motivated by his dependency on the same type of drug involved in this criminal case.
- [13.] In terms of section 39(1) of the Misuse of Drugs Act, 2016, the court's primary objective at this stage is to ensure that the Convict has access to treatment, education, rehabilitation, recovery and social reintegration to address his dependency. Further, section 39(3) provides that a court shall not sentence a drug dependent person unless the court considers that there are no alternative measures available

in the circumstances such as a probation order, suspended sentence, voluntary admission to drug testing, voluntary admission to an approved institution for treatment and rehabilitation or an order for admission to such an institution.

[14.] Having regard to all the facts and circumstances, recommendation of the Probation Report and plea in mitigation on behalf of the Convict, I am satisfied that the convict is a remorseful first time offender who deserves credit for his early guilty plea. I am also satisfied of his almost 12-year-old dependency on the same type of drug involved in this case. I hereby sentence him as follows –

Under Count 2 – Imprisonment for a term of 1 year suspended for a period of 2 years and to fine of SCR20,000/- which must be paid by 28 February 2025. In default of payment of such fine, to imprisonment for 6 months.

[15.] The Convict may appeal this sentence within 30 working days of the date hereof.

Signed, dated and delivered on the 9th February 2024 at Ile du Port, Mahe.

A. Madeleine

A. Madeleine, J

