

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] (18 December 2023)

SCA CR 05/2023

(Appeal from CR 56/2023)

In the matter between

Patrick Uwaoma

Appellant

(rep. by Mr. Clifford Andre)

and

The Republic

Respondent

(rep. by Ms. Shireen Denys)

Neutral Citation: *Uwaoma v R* (SCA CR 05/2023) [2023] (Arising in CR 56/2023)

(18 December 2023)

Before: Fernando President, Twomey-Woods, Robinson JJA,

Summary: Appeal against the sentence of 30 years imposed on importation of 4896.10 grams of cocaine.

Heard: 4 December 2023

Delivered: 18 December 2023

ORDER

Appeal dismissed. The sentence of 30 years' imprisonment maintained.

JUDGMENT

FERNANDO, PRESIDENT

1. The Appellant has appealed against his sentence of 30 years' imprisonment imposed on him on his pleading guilty to importation of cocaine with a net weight of 4896.10 grams in 8 rectangular packets.
2. The maximum sentence that could have been imposed under the law is life imprisonment and a fine of SCR 1 million and the indicative minimum sentence for aggravated offences of importation or exportation, manufacture and trafficking is 20 years' imprisonment. In my view importation coupled with the presence and degree of a commercial element and involvement of an organised group in the offending, as in this case, should attract a sentence above the indicative minimum.
3. The Appellant has appealed against the sentence on the ground that it is harsh.
4. The Appellant had admitted the following facts as narrated to Court by the learned Prosecutor: "On Sunday 20th November 2022 at around 14:15 hours a flight ET879 from Addis Ababa landed in Seychelles. Police officers whilst on duty around 14:50 hours were given an indication by a police dog that there was a black bag on a conveyor that capture the dog's attention. So the police officers proceeded to find out who the owner of the bag was which was later identified as Patrick Uwaoma the accused in this case, who had an American passport. He was informed that he would be scanned by the officers and he was scanned and no foreign bodies were detected. And later on at around 16:20 hours in his presence they searched the luggage and there were also 5 bags. All bags were checked and opened and they contain large quantity of kitchen cutlery and stainless steel cooking pots. The pots were wrapped with aluminium foil and there was a strong smell that was coming from the pots. So from the first bag they took out 4 aluminium packets and from the second bag they took 2 aluminium packets, and from the third bag another two in total there were 8 packets all together. The packets where slightly cut open and contain suspected control drugs. Custom officers used a testing kit on the substance and it turned blue in colour which indicates that it was cocaine. At 17:45 hours the accused was arrested by a police officer for the offence of importation of a controlled drug. Questioned, informed of his constitutional rights and he was detained at Bois de Rose for further formalities he gave a

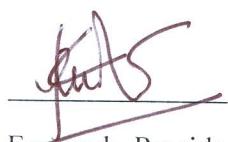
statement explaining that he was asked to bring the drugs to Seychelles. On the 22nd of November an analysis was conducted on the control drugs by the forensic science lab of the Seychelles Police and confirmed that the suspected control drug was indeed cocaine with a total net weight of 4,896.10 grams.” (verbatim)

5. Counsel for the Appellant had sought a Probation Report prior to pleading in mitigation. According to the Probation Report the Appellant who is of Nigerian origin has been an American citizen for the past 15 years and is 58 years old. The Appellant in giving his version regarding his involvement in the case to the Probation Officers had stated that he travelled to Nigeria to attend his mother’s funeral and while in Nigeria his uncle also died. According to him he had to take responsibility for the two funerals and was able to bury only his mother due to financial constraints. In order to find the money to bury his uncle he had gone to Brazil to collect the money from a friend of his. He stayed in Brazil for two weeks. While in Brazil he had been subjected to physical harassment and informed that his son was kidnapped and some people had told him that the son will be released only if he was willing to travel to Seychelles, with drugs and drop them off at a respective destination in Seychelles. According to the Probation Report the Appellant had said that “it was entirely the situation that he was caught up into that eventually forced him to travel to the Seychelles, against his free will.” This in my view and that of the Sentencing Judge is a fanciful story. As the Learned Sentencing Judge had correctly pointed out “If the Appellant did not have the money to bury his uncle, how did he pay for a flight to go to Brazil and stay there for two weeks. The money used for travel could have been used for the burial...” Also is it possible to believe that he travelled to Nigeria from the United States to attend his mother’s funeral without any money with him?
6. Counsel for the Appellant in mitigation had stated that the Appellant suffers from various health problems, such as high blood pressure, palpitation and diabetes, has a limp in his right leg from a car accident and repeated what was set out in the Probation Report as regards the involvement of the Appellant in the offence.

7. The Learned Sentencing Judge in sentencing the Appellant had taken into consideration that the Appellant is a first time offender, had pleaded guilty at the first opportunity and has certain health issues. He had taken into consideration the well-known principles of sentencing, namely deterrence, prevention, rehabilitation and reformation and also the principle of proportionality of sentencing.
8. The mitigating factors in this case do not tip the scales in favour of the Appellant over the presence of aggravating factors against him as set out in **section 48 of the Misuse of Drugs Act, 2016**, namely the presence and degree of a commercial element in the offending because of the amount of the cocaine imported, the involvement in the offence of an organized group to which the offender belongs as demonstrated by the Appellant's version. These facts call upon the Court to treat the offence as aggravated in nature. In my view the false account by the Appellant, in regard to his involvement in the crime, erases the effect of his admission of the truth of the charge through the guilty plea. In my view a person cannot be considered as remorseful if he is not truthful. The Appellant by lying to Court has clearly shown disrespect to Court, a factor that needs to be taken into consideration in sentencing. It is to be noted that section 48 dealing with aggravating factors is not an exclusive provision. Counsel for the Appellant has correctly stated in the Written Submissions filed before the Court that "Offences involving Class A drugs or substantial quantities of controlled substances tend to result in longer sentences; that the courts emphasize the need to send a strong message of deterrence to combat drug related offences, which are seen as causing widespread and significant harm to the youth and society as a whole. Sentences aim to reflect the public's strong condemnation of such crimes and discourage others from engaging in similar activities"
9. The Appellant has not submitted any case where the facts and circumstances are similar. Of the 5 cases cited by the Appellant, in none of them did the drugs involved exceed 800 grams save in one. It is my view that the sentence given in **R V Dos Anjos** by the Supreme Court was too lenient and that could have been the reason why having appealed against the sentence to this Court, the Appellant withdrew her appeal. I am however of the view that a court in passing sentence is not bound to give a sentence on the basis of what another court

has given in an earlier case, merely to ensure uniformity with earlier cases, but, may consider them. If that be the case a sentencing Judge would be left with little discretion in sentencing. It is to be noted that the facts and circumstances and the aggravating and mitigating factors of each case are not identical. None of the well-known grounds for an appellate court to interfere with a sentence passed by the Sentencing Court exist in this case. I am not prepared to reduce the sentence merely to reach consistency on the basis of numerical equivalence as was stated by this Court in the case of **Suki V R (SCA 10 of 2019) [2020] SCCA 13 (21 August 2020)** citing the Australian case of Hili V The Queen. The sentence in this case may appear to be harsh, but is not manifestly harsh and excessive taking into consideration the facts and circumstances of this case and the maximum sentence that could have been imposed.

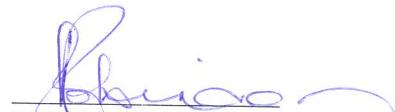
10. I therefore dismiss the appeal. The sentence of 30 years' imprisonment is maintained.


Fernando President

I concur:


Dr. M. Twomey-Woods JA

I concur:


F. Robinson JA

Signed, dated and delivered at Ile du Port on 18 December 2023.