

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 1005
CO. No 55/2019

In the matter between

THE REPUBLIC

(rep. by George Thatchett)

and

TONY PALMYRE

(rep. by Alexia Amesbury)

Neutral Citation: *R v Palmyre Cr.55/2019* [2019] SCSC 1005 (18 November 2019).

Before: Twomey CJ

Summary: possession of a controlled drug (cannabis)- permitting or suffering a place for trafficking in a controlled drug- plea of guilty- sentence

Heard: 11 July 2019

Delivered: 18 November 2019

ORDER

The accused is sentenced to:

- 1. On count 1, I impose a fine of SR 3000 to be paid before the end of November 2019. In default of payment of the fine of SR 3,000/-, the convict is to serve a term of 1 month imprisonment*
- 2. On count 2, I impose a fine of SR 3000 to be paid before the end of December 2019. In default of payment of the fine of SR 3,000/-, the convict is to serve a term of 1 month imprisonment*
- 3. On count 3 I impose to a term of one (1) year imprisonment which I suspend for a period of two (2) years and additionally a fine of SR 10,000 to be paid before the end of January 2020. In default of payment of the fine of SR 10,000/-, the convict is to serve a term of 6 months imprisonment*
- 4. On count 4 I impose a term of six (6) months imprisonment which I suspend for a period of two (2) years and a fine of SR 5,000 to be paid before the end of February 2020. In default of payment of the fine of SR 5,000/-, the convict is to serve a term of 3 months imprisonment*
- 5. On count 5 I impose a term of six (6) months imprisonment which I suspend for a period of two (2) years, and a fine of SR 5,000 to be paid before the end of March 2020. In default of payment of the fine of SR 5,000/-, the convict is to serve a term of 3 months imprisonment*

The terms of imprisonment imposed in Counts 3, 4 and 5 if triggered are to run concurrently. Time spent in remand to count towards sentence. Having pleaded guilty, the convict is entitled to remission at the discretion of the Superintendent of Prisons.

SENTENCE

TWOMEY CJ

[1] The convict, Tony Palmyre a forty five year old self-employed male living at Cascade, Mahe, was on his own guilty plea convicted of criminal offences under five counts namely:

- 1. Unlawful Possession of a controlled drug namely of 11.74 grams of herbal cannabis found at Cascade, Mahe on the 30 August 2019 contrary to section 8 (1) read with section 20 (1) (a) of the Misuse of Drugs Act*
- 2. Unlawful Possession of a controlled drug namely of 3.85 grams of cannabis resin found on the 30 August 2019 at Cascade, Mahe contrary to section 8 (1) read with section 20 (1) (a) of the Misuse of Drugs Act*
- 3. Permitting or suffering his residence at Cascade, Mahe on 30 August 2019 to be used for the purpose of trafficking in a controlled drug namely heroin having a net weight of 114.18 grams with 25.21 grams of heroin content contrary to section 11 (1)(c) of the Misuse of Drugs Act punishable under the Second Schedule of the same Act.*
- 4. Permitting or suffering his residence at Cascade, Mahe on 30 August 2019 to be used for the purpose of trafficking in a controlled drug namely 78.75 grams of herbal cannabis contrary to section 11 (1)(c) of the Misuse of Drugs Act punishable under the Second Schedule of the same Act.*
- 5. Permitting or suffering his residence at Cascade, Mahe on 30 August 2019 to be used for the purpose of trafficking in a controlled drug namely 79.88 grams of cannabis resin contrary to section 11 (1)(c) of the Misuse of Drugs Act punishable under the Second Schedule of the same Act.*

[2] The brief facts of the case are that on 30 August 2019, officers of the Anti-Narcotics Bureau received information that the convict was transacting in certain kinds of drugs. They observed the premises and observed a vehicle driven by the convict near Cascade church. On his interception by the officers the convict was seen throwing something out of the car window. These were recovered and are the drugs referred to in counts 1 and 2 of the Charge Sheet. The officers then brought the convict to his residence and conducted a search where

they recovered the drugs which are the subject matter of Counts 3, 4 and 5 with which he has been convicted. These facts were accepted by the convict.

[3] It is noted that the convict was charged with possession offences and suffering or permitting his residence to be used for the purpose of trafficking. These are lesser offences to trafficking. In a sense he has not been charged with any trafficking offences which attract a much higher penalty.

[4] A probation report carried out on order of the court on the convict relates the convict's difficulties with drug addiction beginning two years ago due to pressures faced by him in his marital life prior to the divorce with his wife. He explained that the drugs were solely for his own consumption and that he admits his fault. He expressed remorse for the offence and asked for a second chance as his incarceration will impact negatively on his three children who are very attached to him. He has stated that he has already taken the initiative to detox from drugs. He is also self-employed as an advertising designer.

[5] Learned counsel for the convict moved the Court in mitigation to impose a lenient sentence on the convict for the following reasons:

(1) He is a first time offender

(2) He has pleaded guilty and saved the Court's time and expenses of a trial.

(3) There are no aggravating factors in this case.

(4) He wishes to be rehabilitated

[6] I observe that the prosecution has brought charges of possession and permitting or suffering a premises to be used in connection with trafficking under sections 8 and 11 of the Misuse of Drugs Act (MODA) and not charges of trafficking against the convict in respect of the drugs. It is apparent that the prosecution has done so having taken into consideration the provisions contained in section 36 of the Misuse of Drugs Act 2016 and done so on the basis that the drugs were for the convict's private use and not for trafficking purposes.

[7] I have also noted the provisions of section 47 (4) of the Misuse of Drugs Act which provides that:

“In sentencing a person convicted of an offence under Section 8 of this Act, the Court shall not impose a Sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all the circumstances.”

- [8] I take into consideration that the main purposes of sentencing are various: the protection of society, the deterrence of the offender and of others who might be tempted to offend, to have retribution and to reform and rehabilitate the convict. The purposes overlap and none of them can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. In addition it was held in *R v Aden* (2011) SLR 41 that when determining sentence, the court may be lenient to first time offenders and where they need another chance to reform and join society. The Court therefore may in its discretion take into account the circumstances of the accused.
- [9] Counsel for the convict has also submitted that there are no aggravating factors in this case. In *Morin v R* SCA Cr. 11/2002) [2003] SCCA 19 (11 April 2003) the Court of Appeal held that a Court should, in the absence of serious aggravating factors, be slow to sentence a first time offender to a term of imprisonment if the offender can be appropriately dealt with in some other way and that much will depend on the facts and gravity of each case.
- [10] The convict has also asked for help for his addiction.
- [11] In the circumstances and taking all the matters above into consideration, I hereby sentence the convicted person as follows:

- 1. On count 1 I impose a fine of SR 3000 to be paid before the end of November 2019. In default of payment of the fine of SR 3,000/-, the convict is to serve a term of 1 month imprisonment*
- 2. On count 2 I impose a fine of SR 3000 to be paid before the end of December 2019. In default of payment of the fine of SR 3,000/-, the convict is to serve a term of 1 month imprisonment*
- 3. On count 3 I impose to a term of one (1) year imprisonment which I suspend for a period of two (2) years and additionally a fine of SR 10,000 to be paid before the end of January 2020. In default of payment of the fine of SR 10,000/-, the convict is to serve a term of 6 months imprisonment*
- 4. On count 4 I impose a term of six (6) months imprisonment which I suspend for a period of two (2) years and a fine of SR 5,000 to be paid before the end of*

February 2020. In default of payment of the fine of SR 5,000/-, the convict is to serve a term of 3 months imprisonment

5. On count 5 I impose a term of six (6) months imprisonment which I suspend for a period of two (2) years, and a fine of SR 5,000 to be paid before the end of March 2020. In default of payment of the fine of SR 5,000/-, the convict is to serve a term of 3 months imprisonment

- [12] I make further order that the terms of imprisonment imposed in Counts 3, 4 and 5 if triggered will run concurrently. Time spent in remand to count towards sentence. Having pleaded guilty, the convict is entitled to remission at the discretion of the Superintendent of Prisons.
- [13] Finally, I accept that the convict is a drug user and direct that he be assessed for suitability for a drug rehabilitation programme by the responsible department in the Ministry of Home Affairs.
- [14] The convict has a right of appeal against the conviction and sentence in this case.

Signed, dated and delivered at Ile du Port on 18 November 2019

Twomey CJ