

IN THE SEYCHELLES COURT OF APPEAL

[Coram: B. Renaud (J.A), F. Robinson (J.A), G. Dodin (J.A)]

Criminal Appeal SCA 41/2016

Appeal from Review Tribunal No. 148/16

(Arising out of Supreme Court Decision CR 09/2012)

Andy Allain Monthy

Appellant

Versus

The Republic

Respondent

Heard: 02 May 2018

Counsel: Mr. Nichol Gabriel for the Appellant

Mr. Ananth Subramaniam for the Respondent

Delivered: 11 May 2018

JUDGMENT

B. Renaud (J.A)

1. The Appellant, Andy Allain Monthy, was charged and convicted for the offence of trafficking in a controlled drug namely cannabis herbal material, contrary to section 5 read with section 14(d) and section 26(1)(a) of the Misuse of Drugs Act Cap 133, punishable under section 29(1) of the Misuse of Drugs Act Cap 133 and second schedule referred thereto in the Act.
2. On 22nd January, 2012 at St. Louis, Mahe, the Appellant was found in possession of 2,695.7 grams of cannabis herbal material which gives rise to the rebuttable presumption of having possessed the said controlled drugs for the purposes of trafficking.
3. On 10th April, 2012, the Appellant pleaded guilty to the charge, was accordingly

convicted and sentenced to a term of 8 years imprisonment. The time he spent in remand was to count towards the sentence. When he sentenced the Appellant to 8 years imprisonment in April 2012 the Learned Judge took into account –

“..... all these facts and mitigating factors such as having pleaded guilty at the earliest time, period under detention, the quantity and other personal and surrounding circumstances”.

4. On 1st August, 2016 the Appellant applied for a review of the outstanding portion of his sentence by the Sentence Review Tribunal in terms of Section 51(2) of the Misuse of Drugs Act 5 of 2016 (the new MODA). His application was duly considered by the Sentence Review Tribunal on 30th September, 2016. The Tribunal concluded that the offence committed by the Appellant was aggravated in nature and therefore the sentence imposed was thus lower than the minimum indicative sentence that would likely be imposed under the new MODA. The Appellant would not accordingly be entitled to the benefit of remission of sentence in view of the aggravating nature of the offence. The Tribunal therefore did not interfere with the sentence and dismissed his application.
5. The Appellant has now appealed to this Court against the decision of the Sentence Review Tribunal setting out the following grounds:

Ground 1

The learned members of the Review Panel erred in declining the application of the Appellant to have his sentence reduced.

Ground 2

The learned members of the Review Panel erred in grounding their decision on the fact that the drugs in question weighing 2.6 kgs amounted to a large quantity.

6. The Appellant is now praying this Court to quash the sentence entered against him.

7. Both grounds will be considered together.

GROUND 1 & 2

Section 7(4) of the new MODA states that –

“where a person is convicted of an offence of trafficking in more than 1.5 kilograms of Cannabis or Cannabis Resin, or more than 250 grams of any other controlled drug, the Court shall treat such offence as aggravated in nature.”

8. Section 51 (8) of the same MODA states that in considering the application (application for review), the Tribunal shall take into account:

“a) Whether the offence in question would be treated as an offence of an aggravated nature under this Act, in which case there shall be a presumption against review.”

9. Section 47 (5) of the said new MODA states:

“In sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the Court shall have due regard to the indicative minimum sentence for an aggravated offence of that kind.”

10. It was submitted that under the Misuse of Drugs Act 5 of 2016, (the new MODA), a sentence of between 3 and 5 years is indicated for a first offender in possession/trafficking of 1.5 to 5kg of a Class B drugs. Distinction is made in respect of a repeat offender where maximum sentence according to new MODA is 50 years and minimum indicative sentence is 15 years.

11. The Appellant was sentenced before the coming into force of the new MODA and the sentence meted out on the Appellant was therefore higher than the recommended sentence under the new MODA which is between 3 and 5 years for the offence of trafficking of between 1.5 and 5 kg of Cannabis herbal materials.

12. In the light of the foregoing, we find that in the circumstances the sentence is excessive and ought to be reviewed downwards which we hereby do. The sentence of 8 years is accordingly set aside and in its stead a sentence of 4 years is hereby imposed.
13. The Appellant who is a first offender had in his possession 2,695.7 grams of cannabis herbal materials which is a Class B drug. That being more than 1.5 kilograms of Cannabis and the offence is therefore deemed aggravated in nature in terms of section 7(4) of the new MODA.
14. The Appellant is not entitled to remission in view of the amendment made in section 30(2) (b) of the Prisons Act CAP 180 in Act 6 of 2016 which provision restricted the granting of remission for persons serving imprisonment for an offence of an aggravated nature under the new MODA.
15. We therefore find that the Sentence Review Tribunal did not err in declining his application to order that he is entitled to any remission in sentence. We would uphold the decision of the Tribunal on that score having considered the deleterious and dangerous nature of this drug on society especially on the younger generation.
16. In the final analysis the sentence of 8 years imprisonment is hereby reduced to 4 years but without the benefit of remission.
17. This Appeal is partly successful.

B. Renaud (J.A)

I concur:.

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G. Dodin (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 May 2018