

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A. Fernando (President), M. Twomey (J.A), F. Robinson (J.A)]

Criminal Appeal SCA 24/2019

(Appeal from Supreme Court Decision CO 58/2018)

Selwyn Elvis Esparon

Appellant

Versu
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The Republic

Respondent

Heard: 04 August 2020

Counsel: Mr. C. Andre for the Appellant

Mr. A. Subramaniam for the Respondent

Delivered: 21 August 2020

JUDGMENT

A. Fernando (President)

1. The Appellant in this case has appealed against the sentence imposed on him on his pleading guilty to the charge of Possession of 29.3 grams of Cannabis Resin and a substance weighing 31.8 grams of Heroin with a purity of 49% which had a total Heroin content of 15.5 grams.
2. He had been sentenced to a term of three years' imprisonment and a fine of SCR 25,000 and in default of payment of the fine the Appellant had been ordered to serve

a term of 6 months' imprisonment which would be consecutive to the term of 3 years' imprisonment imposed on him.

3. The Appellant had appealed against the sentence, according to his Notice of Appeal, on the basis that it is harsh.
4. The Appellant having pleaded not guilty on the first two occasions the case was called (28 January 2019 and 24th July 2019) had thereafter on the 5th of August 2019 pleaded guilty after the Prosecution had agreed to an amendment of the charge and had been convicted on the basis of his own plea of guilty.
5. This was a case where according to the facts as narrated by the Prosecutor and admitted by the Appellant, the Appellant was found in possession of the drugs as referred to at paragraph 1 above, after a controlled delivery.
6. The learned Sentencing Judge having taken into consideration the Submissions in Mitigation by Counsel for the Appellant, had stated on his Ruling on Sentence; that he had considered in mitigation of the Sentence, the facts contained in the probation report, that the Appellant is 32 years of age, has a 2-year-old child, is employed as a messenger for a construction company, and that he has expressed remorse and regret by pleading guilty at the very outset of the case. That however as stated at paragraph 4 above was after the charge was amended.
7. As stated in the Ruling on Sentence the motive for the commission of the offence according to the Probation Report had been to obtain money to spend on himself and to feed his drug addiction and that he had been a user of controlled drugs from his younger days. However, the Learned Sentence Judge had stated that "It appears from the report that the convict has undertaken to reform himself and now undertakes to lead a drug free life."

8. The Learned Sentencing Judge had also taken into consideration the seriousness of the charge bearing in mind the type and quantity of drugs possessed.
9. According to the Second Schedule of the Misuse of Drugs Act 5 of 2016 dealing with 'Penalties', a sentence of 30 years imprisonment and a fine of SCR 500,000 is prescribed for possession of Class 'A' drugs with an indicative minimum of 10 years imprisonment for an aggravated offence. There are no aggravating factors as set out in section 48 of the above-mentioned Act, in this case. The recommended sentence according to Sentencing Guidelines under the Misuse of Drugs Act 5 of 2016; for possession of a quantity of 10 to 50 grams of a Class A drug, in this case heroin, is 5 to 8 years' imprisonment and a fine at the discretion of the Judge especially when a lesser term of imprisonment is imposed.
10. I am of the view that the imposition of a fine of SCR 25,000/- and in default of such payment a term of 6 months imprisonment which was to be consecutive to the term of 3 years imprisonment imposed, according to the circumstances of this case is harsh. It is difficult to conceive that the Appellant who is a messenger working for a company could find that amount of money during the period of his imprisonment to escape the default sentence from coming into operation at the expiry of his 3-year period of imprisonment.
11. As regards the sentence of 3 years imprisonment I see no grounds to reduce it. It is in fact below the recommended sentence according to Sentencing Guidelines under the Misuse of Drugs Act 5 of 2016 for possession of a quantity of 10 to 50 grams of a Class A drug, as stated at paragraph 9 above. I also cannot find a great disparity between the sentences imposed in the other cases cited by Counsel for the Appellant when taking into consideration the facts and circumstances of the said cases, with this case. I therefore allow the appeal partly against the sentence by removing the fine that has been imposed

on the Appellant but maintaining the sentence of 3 years imprisonment. The appeal is partly allowed.

A. Fernando (President)

I concur:. M. Twomey (J.A)

I concur:. F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 August 2020