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IN THE SEYCHELLES COURT OF APPEAL

The Republic

Appellant

v.

Didier Domingue

Respondent

Criminal Appeal No. 12 of 1987

JUDGMENT OF THE COURT

u The Respondent in this appeal was prosecuted before the Senior Magistrate for the offence of possession of Dangerous Drugs in breach of sections 4 and 5 and punishable under section 26(1) of the Dangerous Drugs Act (Cap. 186). He was found guilty of the offence. On the 28th May 1987 the Senior Magistrate before passing sentence asked learned Counsel ^{then} ~~due~~ appearing for the Respondent whether there were any special reasons. Learned Counsel replied that there were none. The Senior Magistrate proceeded to sentence the Respondent to serve a sentence of three years imprisonment, which is the minimum prescribed by law.

u The Respondent appealed against the decision of the Senior Magistrate to the Supreme Court both against the conviction and the sentence, but no mention was made therein of any special reasons. The matter was heard on the 20th November 1987 before Mr. Justice A.M. Ahmed. u The conviction was upheld. However the learned Judge applied the proviso to section 26(1) of the Dangerous^{Drugs} Act~~s~~ and reduced the sentence from 3 years to 18 months imprisonment on the ground that he considered that "the fact that the offender has no previous conviction as well as the small quantity of cannabis that was found in his ("Respondent's) possession was certainly special reasons which might have been taken into account in the imposition of a term of three years imprisonment."

The Republic is now appealing against the sentence passed by the Supreme Court on the ground that the learned Judge erred in law in his finding that the absence of previous conviction and the small quantity of drugs involved were special reasons for imposing a sentence below the minimum sentence of imprisonment prescribed.

Mr. Derjacques who appeared for the Republic invited our attention to the Judgment of this Court in the matter of Gervais Pool v. The Republic, Marcel Moustache v. The Republic, Emmanuel Jack v. The Republic, Excel Mike Jean v. The Republic and The Republic v. Ericson Adonis. Criminal Appeals Nos. 12 of 1984, 13 of 1984, 15 of 1984, 2 of 1985 and 1 of 1985 respectively.

The same issues that arise in the present case were considered. It is a matter for regret that the learned Judge's attention was not drawn to this Court's decision.

le We believe that it would be sufficient for ^{the} its purpose of this case to refer to the following passage from the Judgment of the Court of Appeal.

"We are satisfied that "special reasons" must be exceptional and extraordinary reasons, special as opposed to general. The usual mitigating circumstances as those found to exist in the Pool, Moustache, Jack, Jean and Adonis cases are ordinary and commonplace mitigating factors normally encountered practically daily in criminal cases and cannot by themselves, singly or in combination constitute special reasons. The offender's tender age, absence of previous conviction, the smaller or even trivial quantity involved ... are not and cannot be special reasons".

In our view the ratio decidendi of those cases facilitate our finding. We have no alternative than

allowing this appeal.

We restore the sentence of three years imprisonment passed by the Senior Magistrate.

A. Munafa

..... President of Appeal

M. S. S. S.

..... Justice of Appeal

C. del. S. S. S.

..... Justice of Appeal

Dated the 22nd day of March, 1988