

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) ,M. Twomey (J.A), B. Renaud (J.A)]

Criminal Appeal SCA 22/2015

(Appeal from Supreme Court Decision Criminal Appeal No.77/2013)

Jules Labrosse

Appellant

Versu
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The Republic

Respondent

Heard: 01 August 2017

Counsel: Mr. Anthony Derjacques for the Appellant

Mr. Jayaraj Chinnasamy for the Respondent

Delivered: 11 August 2017

JUDGMENT

B. Renaud (J.A)

- [1] The Appellant, a prison warden was convicted in the Magistrate's Court on 24th July, 2013 of the offence of possession of controlled drug contrary to Section 6(a) read with Section 26(1)(a) and punishable under Section 29(1) of the Misuse of Drug Act Cap 133 (MODA), on two counts, in case Criminal Side 01 of 2013.
- [2] The particulars of the offence under the 1st count are that the Appellant at Montagne Posee Prison, on 22 December 2012 had in his possession 1.43 grams of heroin diamorphine, a controlled drug and under the 2nd count the Appellant had in his possession 20.3 grams of cannabis resin, a controlled drug.
- [3] At the end of the trial the Appellant was found guilty on both counts by the Magistrate Court and on 24th July, 2013 and was convicted. The Appellant was sentenced on 12th August, 2013 to a term of 6 years imprisonment on count 1 and to a term of 2 years

imprisonment on count 2. The sentences were made to run concurrently which effectively means that the Appellant will serve 6 years imprisonment.

First Appeal

- [4] The Appellant appealed to the Supreme Court against the said conviction and sentence on several grounds. The learned appellate Judge of the Supreme Court, in Cr. Side No. 77 of 2014, on 12th June, 2015 agreed with the learned Magistrate that the Appellant was a Prison Warden who had been in breach of his duties in attempting to smuggle controlled drug in the Prison. He dismissed the appeal and upheld the conviction and sentence imposed by the learned Magistrate.

Second Appeal

- [5] The Appellant aggrieved by the decision of the Supreme Court given on the 12th June 2015 has now appealed to this Court against sentence only.

Ground of Appeal

- [6] The Appellant has advanced one ground of appeal in that the Learned Appellate Judge erred in law in failing to hold and determine that the sentence of 6 years imprisonment for possession of a controlled drug, namely, 1.43 grammes of Heroin and 20.3 grammes of cannabis resin, was harsh and excessive in all the circumstances of the case and that further, this is wrong in principle.

The Law

- [7] Although the Appellant was convicted under the Misuse of Drugs Act (20) (a) we are for the purpose of sentencing duty bound to take into consideration the sentences now imposed by the new Misuse of Drugs Act. **Sections 47(1); (2) and (5)** of Act No.5 of 2016 of the Misuse of Drugs Act stipulates as follows:

“(1) In sentencing a person convicted of an offence under part II of this Act, whether upon a guilty plea or following trial, the Court shall have regards to

- a) The objectives of the Act;*
- b) The degree of control to which the relevant controlled drug is subject; and*

- c) *The general objectives of transparency and proportionality in sentencing.”*
- (1) *Where an aggravating or mitigating factor identified in section 48 or section 49 applies to the circumstances of such an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence.*
- (5) *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 aggravated offences of that kind.*
- [8] Aggravating factors (factors that support a more serious sentence) under **Section 48(1)(e)** of the same Act in respect of those offences, is explained as follows:-
- “The fact that the offender holds public office or a high-profile position in the community particularly if the offence is connected with the office or position in question.”*
- [10] **Section 48(2)** provides that –
- Where one or more of the aggravating factors identified in subsection one is present to a significant extent, the Court shall treat the offence as aggravated in nature.*
- [11] When the Appellant was sentenced on the 12th July 2013, the Misuse of Drugs Act of 2012 was in force. It provided for a maximum sentence of 15 years for a crime committed such as this one. The learned Magistrate sentenced the Appellant to 6 years imprisonment. At the time of appeal before the Supreme Court, the same Act of 2012 was still in force. The Misuse of Drugs Act were amended in June of 2016.
- [12] **Section 51(2)** of the new amended provision of the same provides that outstanding sentences under the earlier Act must be reviewed in accordance with the new Misuse of Drugs Act. Under the new Act, there is no mandatory term of life imprisonment for the said offence and a convict is liable to a maximum of 50 years imprisonment and a fine of SR 500,000.

- [13] The facts as delivered by the Court will serve to indicate whether there are any aggravating circumstances as envisioned by **Section 48** of the new Act exist. If no aggravating circumstances exists, the convict will benefit from the amended provision in that he will be entitled to remission under the amended Prisons Act 6 of 2016.
- [14] Learned Counsel for the Appellant submits that the case for the Appellant is a fit case which warrants a variation of the sentence that was imposed by the Court below. He relied on the case of **Cousin v R SCA 21 of 2013** in which this Court make reference to the principle of “*la peine la plus douce*” which essentially means that when the law is changed in favour of a convict, that law should benefit the convict.
- [15] In the case of **Kelson Alcindor v R [2015] SCA 7**, it was held that the Appellant should benefit from the change of law in his favour, along the principle of “*la peine la plus douce*.” – See **Aubeeluck Gangasing v The State of Mauritius [2010] UKPC 13**. The Appellants’ sentence in both cases were reduced to be in conformity with the amended law which was beneficial to the Appellants.
- [16] Learned Counsel for the Appellant drew the attention of this Court to two particular cases decided early this year. In the case of **Republic v Richard Joseph & Ors (2017)**, the sentence imposed for trafficking 2,957 grammes of Cannabis was 3 years of imprisonment, and, in the case of **Republic v Maureen Jupiter (2017) SCSC 563**, the convict was sentenced to 4 years imprisonment for the offence of trafficking 2,259 grammes of Cannabis.
- [17] In the case of **R v Otar (2016) SCSC 685**, the Supreme Court found that the accused had about 1,700 grammes of cannabis herbal material in his possession and that amount appeared to be the only aggravating factor against the accused. The accused also pleaded guilty to the charge, a fact that was also taken into consideration as it showed a degree of repentance or remorse on his part. It was submitted that the Court normally reduces the sentence by about 20% where there is a guilty plea. If the accused is also a first offender he will benefit from further reduction of his sentence. On the other hand the indicative minimum sentence for an aggravated offence under Section 7 of the second Schedule of the new Act is 15 years.

- [18] For the purposes of the instant case when viewed in relation to the new MODA, the Appellant could have received a sentence of imprisonment for up to a maximum of 2 years and a fine. The sentence to be meted out for having 20.3 grams is imprisonment for up to one year and/or fine.
- [19] The Appellant has also failed to show this Court how the sentence was wrong in principle or in law or how it was manifestly harsh and excessive. Six years imprisonment for a prison officer who is deemed to have known the law and had taken an oath to uphold the same, is not manifestly harsh. The Appellant ought to have been the safeguard against but not the perpetrator of such a crime.
- [22] The appeal is accordingly dismissed.

B. Renaud (J.A)

I concur: F. MacGregor (PCA)

I concur: M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 August 2017