

## IN THE SEYCHELLES COURT OF APPEAL

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

### Criminal Appeal SCA 47/2016

(Appeal from the Review Tribunal SRV No. 207/2016)

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Roy Julius Julienne

Appellant

Versus

The Republic

Respondent

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Heard: 02 May 2018

Counsel: Mr. Clifford Andre for the Appellant

Mr. Ananth Subramaniam for the Respondent

Delivered: 11 May 2018

### JUDGMENT

#### B. Renaud (J.A)

1. The Appellant Roy Julius Julienne along with another accused were charged before the Supreme Court in CR. 10/15 under the Misuse of Drugs Act Cap 133 on the charges of conspiracy to commit the offence of trafficking in a controlled drug and trafficking in a controlled drug on or around 1<sup>st</sup> December 2014 to 28<sup>th</sup> January 2015. The amount of drug involved is 16,863.9 grams of cannabis herbal materials.
2. Pending his trial the Misuse of Drugs Act 5 of 2016 (the new MODA) came into force. The Appellant pleaded guilty to the charges under the new MODA, namely conspiracy to commit the offence of trafficking in a controlled drug and trafficking in a controlled drug contrary to Misuse of Drugs Act Cap 133.

3. The Appellant was convicted upon his guilty plea for the offence of trafficking in a controlled drug and sentenced to imprisonment for a total of 7 and 6 months and also a fine of SR 25,000.00 in default of payment of the fine, Appellant will serve 6 months imprisonment consecutive to the term of sentence imposed on him.
4. The Appellant filed his application before the Sentence Review Tribunal (the Tribunal) under Section 51 (2) of the new MODA to have the outstanding portion of his sentence reviewed. By its order dated 18<sup>th</sup> October 2016, the Tribunal dismissed his application on the grounds that the offence was aggravated in nature and that the sentence imposed was lower than that of the minimum indicative sentence that may likely to be imposed under the new MODA. The offence in this case falls within the aggravating factors stated in Section 7(4) of the Act and as such the Appellant is not entitled to remission.
5. The Appellant being dissatisfied with the decision of the Tribunal has appealed to this Court setting out two grounds of appeal as follows:
  - i. To grant remission
  - ii. To grant court order not to pay the fine of SCR 25, 000/-

6. Section 7(4) of 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.”*

7. Section 47 (5) of the said MODA states that –

*“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 offence of that kind.”*


In addition, Section 48 of the new MODA makes reference to other aggravating factors that support a more serious sentence for drug offences. Section 48(1)(a) of the new MODA provides that –

“ ... *the presence and degree of a commercial element in the offending ...*”, particularly where controlled drugs have been imported into the Seychelles. (*emphasis mine*)

8. Section 51(8) of the new MODA states that in considering an 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. The Appellant is not entitled to remission in view of the amendment made by Act 6 of 2016 to Section 30(2)(b) of the Prisons Act CAP 180. The said Section restricted the granting of remission to persons serving imprisonment for an offence of an aggravated nature under the new MODA.
10. Under the old MODA Cap 133, the penalty for an offence such as the instant one was a mandatory term of life imprisonment. Under the new MODA, there is no mandatory term of life imprisonment but the convict is liable to a maximum sentence of 50 years imprisonment and a fine of SCR 500, 000/-. When the quantity of the controlled drug is over 1.5 kg in the case of Cannabis (a grade B drug) the offence is deemed aggravated in nature and this carries a minimum mandatory of 15 years imprisonment.
11. From the facts and circumstances of the case, the Appellant case falls under Section 7(4) of MODA as the quantity of the controlled drug involved is over 16kgs of Cannabis Herbal Material. This makes the offence against the Appellant aggravated in nature. It also suggests a commercial element. The Appellant is therefore, not entitled to remission.
12. The Second Schedule of the said Act prescribes the punishment of minimum indicative sentence of 15 years for the offence which falls under aggravated circumstances. However,

in the present case, the trial Court despite considering all the facts and circumstances and also having regard to the sentencing guidelines under new MODA, a term of 7 and a 6 months was imposed which is way lower than the minimum indicative sentence of 15 years.

13. As per the recommended sentence guidelines formulated by the Tribunal, if the controlled drug involved more than 10kg to 20kg of Cannabis Material, a sentence of 8 to 12 years imprisonment and a fine is recommended. In the instant case, the quantity of controlled drug is 16,863.9 grams and the sentence imposed against the Appellant is 7 years and 6 months which is much lower than the recommended sentence. The absence of the Superintendent of Prison at the Tribunal hearing, in our considered judgment, was not prejudicial to his case.
14. With regards to payment of the fine of SR25,000.00 the Tribunal suggested that the matter be taken up with Prison Authorities to make necessary arrangements to facilitate the payment of fine by the Appellant.
15. We find no merit in the grounds of appeal and the appeal is accordingly dismissed.



B. Renaud (J.A)

I concur:.



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F. MacGregor (PCA)

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