

IN THE SEYCHELLES COURT OF APPEAL

[Coram: B. Renaud (J.A) F. Robinson (J.A), M. Vidot (J.A)]

Criminal Appeal SCA 36 & 37/2016

(Appeal from Sentence Review Tribunal Nos. SRT 204 & 203/2016)

(Supreme Court No. CR 49/2014)

Danny Eric Dodin

1st Appellant

Kevin Richard Loze

2nd Appellant

Versus

The Republic

Respondent

Heard: 02 May 2018

Counsel: Mr. Joel Camille for the 1st Appellant

Mr. Nichol Gabriel for the 2nd Appellant

Mr. Ananth Subramaniam for the Respondent

Delivered: 11 May 2018


JUDGMENT

B. Renaud (J.A)

1. On 29th July, 2016, the two Appellants, Danny Eric Dodin and Kevin Richard Loze, were convicted on their own guilty plea in the Supreme Court for the offence of possession of 23 grams of pure heroin, and Appellant Dodin was additionally convicted for possession of 716 grams of cannabis. They were both sentenced to undergo 4 years and 6 months imprisonment for the heroin offence and Dodin was sentenced to an additional 9 months imprisonment for the cannabis offence and his sentence was ordered to run consecutively.

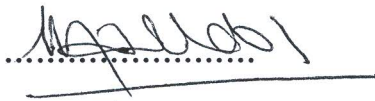
2. They both submitted their respective application before the Sentence Review Tribunal (the Tribunal) established under the Misuse of Drug Act (the new MODA) for review of sentence in accordance with Section 51(2) of that Act after serving 25 months of their sentences.
3. The Appellant Danny Eric Dodin was duly heard by the Sentence Review Tribunal on 18th October, 2016 in case No. SRT 204 of 2016. The Tribunal was satisfied that it is appropriate to vary his two sentences and made them to run concurrently. His sentence was effectively reduced by 9 months.
4. The other Appellant Kevin Richard Loze was also heard by the Sentence Review Tribunal on 18th October, 2016 in case SRT No. 203 of 2016. The Tribunal concluded that there was no ground for reviewing the remaining portion of his sentence and it ordered accordingly.
5. The Appellants are now appealing against the decisions of the Tribunal seeking remission.
6. The facts of the case are briefly that both Appellants were in a vehicle driven by 2nd Appellant Loze which was stopped by NDEA Officers at La Misere on 2nd September, 2014. Loze was apprehend at the car whilst Dodin ran from the car carrying a back-pack which he threw into the bushes. He was also apprehended, the back-pack retrieved and found to contain the heroin. Later a search was conducted in the house of Dodin and the cannabis were retrieved along with the sum of SR6,612.00 and a digital scale.
7. The recommended sentence applicable in the circumstances of the 1st Appellant Dodin who was convicted for having had 23 grams of pure heroin being more than 10 grams of a Class A drugs, is between 5 and 8 years as set out in the sentence guidelines set up by the Supreme Court under new MODA. The learned Judge in the lower Court started with 6 and gave a 25% discount which brought it to 4 years and half years. In respect of the offence of possession of 716 grams of Cannabis, the new MODA recommended a maximum sentence of 3 years imprisonment and the 1st Appellant was sentence to only 9 months. Evidently the Learned Trial Judge was reasonable in his sentencing and showed fairness in meting out the sentences.

8. The Appellants were arrested and charged before the coming into force of the new Misuse of Drug Act which came into operation effective 1st June of 2016. The Trial Judge must have taken into consideration the new sentencing structures provided for in new MODA. The respective final sentences of the Supreme Court are indeed below the range that would likely be imposed under the new Misuse of Drugs Act. The guilty plea and other mitigating factors, in our view, were given due consideration when the sentences were imposed.
9. The Tribunal also reduced the 1st Appellants sentence of 9 months by making the sentences to run concurrently. Thus both serve a sentence of 4 and half years.
10. On the consideration of the issue of remission, an important factor which ought to be taken into consideration is the fact that both Appellants were tested positive for heroin use on the very day when their respective application for review was heard by the Tribunal. This is a factor that the Tribunal rightly considered when reviewing the application for remission as it has relevance regarding the conduct of the Appellants. It suggests that the Appellants were not remorseful for their acts and have continued to use drugs even in prison.
11. As discussed earlier above, and on the basis of the same reasoning we find that the sentence of four and a half years imprisonment meted out on the 2nd Appellant Loze is also squarely within the recommended range set out in the new MODA.
12. We have diligently reviewed the facts of this case in respect of the two Appellants and the reasoning of the Learned Trial Judge when imposing the respective sentences of the Appellants. We have also reviewed the reasoning of the Sentence Review Tribunal in each case and we agree with the decision of the Tribunal in both case cannot be faulted.
13. For reasons stated above we dismiss this appeal in respect of both Appellants.



B. Renaud (J.A)

I concur:.

A handwritten signature in black ink, appearing to read 'M. Vidot', is written over a dotted line. A solid horizontal line is drawn below the dotted line.

M. Vidot (J.A)

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