

IN THE SEYCHELLES COURT OF APPEAL

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

Criminal Appeal SCA 46/2016

Appeal from SRV No. 176/16

(Arising out of Supreme Court Decision CR 18/12)

Guymy Gubert Etienne

Appellant

Versus

The Republic

Respondent

Heard: 02 May 2018

Counsel: Mr. Joel Camille for the Appellant

Mr. Khalyaan Karunakaran for the Respondent

Delivered: 11 May 2018

JUDGMENT

B. Renaud (J.A)

1. The Appellant was convicted of the offence of trafficking in a controlled drug, namely, cannabis herbal material, contrary to section 5 read with section 14, 18 and 25(1) of the Misuse of Drugs Act (Cap 133) (MODA). At the time of his conviction the 40 year old convict was a self-employed person residing at Cap Bonm Jean, Mont Plaisir, Anse Royale. He was found in possession of 18.9 kilograms of cannabis herbal material on 5th March, 2012.
2. The Appellant pleaded guilty to the charge and was accordingly convicted and on 17th July, 2012 and was sentenced to undergo 10 years imprisonment.

3. The Appellant applied to the Sentence Review Tribunal (the Tribunal) to have his sentence reviewed, in terms of section 51(2) of the Misuse of Drugs Act 5 of 2016 (the new MODA).
4. On 29th September, 2016 the Tribunal found that as the 10 year sentence originally imposed by the sentencing Court is within the recommended sentence in the new MODA which is set at between 8 and 12 years imprisonment and a fine. The Tribunal held that it had no reason to interfere with the sentence imposed since the sentence is also aggravated because of the 18.9 kilograms of cannabis herbal material drugs involved.
5. The Tribunal held that the Appellant was also not entitled to remission of his sentence by virtue of Section 7(4) of the new MODA, since the offence was aggravated in nature.
6. The application of the Appellant was accordingly dismissed and he has now appealed against the decisions of the Sentence Review Tribunal setting out 3 ground of appeal.
7. The Appellant set out three grounds of appeal as follows:
 - i. The Learned Magistrate erred in law in her decision in holding that given the quantity of drugs in the case, the Appellant is not entitled to the benefit of remission and accordingly did not call upon Mr. Tirant the Superintendent of Prisons, to testify as to Appellants conduct before the Tribunal.
 - ii. The Learned Magistrate erred in law in not affording the Appellant the benefit of further mitigation through the evidence of Mr. Tirant, pertaining more specifically to Appellants good conduct in the prison.
 - iii. The decision of the Learned Magistrate is erroneous in law, in that in not allowing the appeal of Appellant, same goes contrary to law and the sentencing principles established under the new MODA 2016.
8. The Appellant seeks an order for a reversal of the decision of the learned Magistrate and to set aside the remaining sentence.
9. Section 7(4) of the new 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.”

10. Section 47 (5) of the new 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.”

11. Further, Section 48(1)(a) of the new MODA makes reference to other aggravating factors –

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

12. Section 51 (8) of the new MODA states that in considering the application (this is 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.

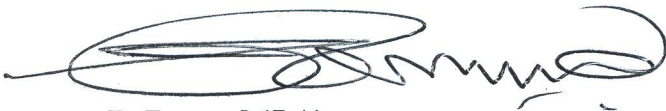
13. The Appellant is not entitled to remission in view of the amendment made in Section 30(2) (b) of the Prisons Act CAP 180 in Act 6 of 2016. The said Section restricted the granting of remission for the persons serving imprisonment for an offence of an aggravated nature under the new MODA.

14. The reasons given above disposes of the 1st ground of appeal as it lacks merit. In the circumstances we see no reason to address the second ground of appeal.

15. As to the 3rd ground, we find it imperative that reference is made to the preamble of the new MODA, which *inter alia* states that -

“...to provide for effective measures against abuse and diversion of controlled drugs and precursors; facilitate the investigation and prosecution of offences involving controlled drugs, in particular drug trafficking; promote the treatment, education, rehabilitation, recovery and social reintegration of drug users and drug dependant persons...”

16. The new MODA provides a sentencing structure that is less stringent than its predecessor, the 1990 Act. It sets out recommended sentences based on how many grams an accused is found with. Accordingly the new MODA sets out that a person convicted, for having between 10kg and 20kg of cannabis herbal materials, is liable to imprisonment of 8 to 12 years and a fine. In view of this provision of law, it is hard to fathom how the Tribunal went contrary to the law and sentencing principles as provided for under the new MODA.
17. Even though the Appellant was sentenced before the coming into force of the new MODA, the sentence meted out on the Appellant was still lower than the recommended sentence in the new MODA which stipulates a sentence of 8 to 12 years for the trafficking on presumption, of more than 10kg to 20kg of class B drugs.
18. As a result of the above, we find no merit in all the three grounds of appeal as relied upon by the Appellant
19. 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