

IN THE SEYCHELLES COURT OF APPEAL

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

Criminal Appeal SCA 53/2016

(Appeal from Supreme Court Decision CR 34/2016)

Matthew Chimezie Nwakamma

Appellant

Versu
s

The Republic

Respondent

Heard: 20 August 2018

Counsel: Mr. Leslie Boniface for the Appellant

Ms. Amanda Faure for the Respondent

Delivered: 31 August 2018

JUDGMENT

B. Renaud (J.A)

Background

The Appellant pleaded guilty and was convicted of the offence of importation of a controlled drug into Seychelles, contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule. The Appellant was sentenced on the 7th of November 2016 to 10 years imprisonment. The Appellant being aggrieved by the decision given by Judge Burhan at Supreme Court, appeals to this Court against sentence.

The Appellant’s only ground of appeal is that the sentence is harsh. The Appellant seeks the following remedies:

This Court should reduce the sentence of 10 years to as it deems fit.

In the alternative this Honourable Court is prayed to order that the Appellant's sentence term is made to be spent in his country of origin.

It is a well known principle of law that the appellate court will only intervene in sentences handed out by the lower court where:

The sentence was harsh, oppressive or manifestly excessive; or

The sentence was wrong in principle; or

The sentence was far outside the discretionary limits; or

A matter had been improperly taken into consideration, or a matter that should have been taken into consideration was not; or

The sentence was not justified in law.

Section 5 of Act 5 of 2016 Misuse of Drugs Act stipulates that a person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

In the case of **Dingwall v Republic 1966 SLR 205** it was held that:

“An appellate court will only alter a sentence imposed by the trial Court if it is evident that it has acted on a wrong principle, or overlooked some material view of the circumstances of the case.”

Another principle established in the case of **Cupidon v Republic 1990 SLR 67** states that:

“An appellate court will only alter a sentence imposed by the trial court where the sentence is manifestly excessive in view of the circumstances.”

Section 47 (5) of the said *MODA* states:

“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.”

A perusal of the judgment and sentence of Judge Burhan reveals that before passing sentence he took into consideration various mitigating factors including that the Appellant is a first time offender and that he is a family man. He also took into account that the Appellant had saved the Court's time by pleading guilty.

It is the submission of the Appellant that the learned Judge erred in law and in fact by not taking a matter into consideration that he should have taken consideration of. According to the Appellant, the circumstances of the Appellant were special, hence special consideration should have been given to the social plight of the Appellant. That the Appellant comes from a poor background and has been used as a mule to carry the substance into Seychelles in return for a pittance.

It is our view that the lower court Judge had the power to impose the indicative minimum sentence as prescribed by law which is 20 years imprisonment, but having taken all the mitigating factors into consideration, including his special circumstances, the learned Judge imposed a sentence of 10 years which is way below the sentence prescribed by law. The learned Judge also correctly stated that the Appellant should not be entitled to remission considering the seriousness of the charge.

Consequently, there is nothing in the facts or application of the law that suggests that the sentence given was harsh or manifestly excessive. As such this Court finds that the sentence imposed was proper.

It is not within the province of this Court to order that the Appellant serves his sentence in his own country.

Appeal is therefore, dismissed.

B. Renaud (J.A)

I concur:.

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A.Fernando (J.A)

I concur:.

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F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 31 August 2018