

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A. Fernando (President), M. Twomey (J.A), F. Robinson (J.A)]

Criminal Appeal SCA 03/2019 & 04/2019

Arising out of Review Tribunal Application 114 & 121/2016

(Supreme Court Case No: CR 20/2014 & Cr. Appeal SCA 25 & 26/2015)

Jean Francois Adrienne

1st Appellant

Terence Servina

2nd Appellant

Versus

The Republic

Respondent

Heard: 03 August 2020

Counsel: Mr. N. Gabriel for the Appellants

Mr. A. Subramaniam for the Respondent

Delivered: 21 August 2020

JUDGMENT

A. Fernando (President)

1. The Appellants have appealed against the decision of the Review Tribunal that reviewed the outstanding portion of the sentences that were imposed on the Appellants on their conviction by the Supreme Court in Case number CR 20/2014.
2. The Review Tribunal had been established under section 51 of the Misuse of Drugs Act 5 of 2016 which is a transitional provision. The said Act came into operation on the 20th April 2016. Section 51(2) of the said Act states:

“Notwithstanding anything in this Act or any other written law, an offender who is

...serving a sentence of imprisonment for an offence under the repealed Act may apply to the tribunal constituted under subsection (1) for review of the outstanding portion of that sentence in accordance with this Act.”

3. The reference to the repealed Act in section 51(2) referred to at paragraph 2 above is the Misuse of Drugs Act 1990 under which the Appellants had been sentenced. The Appellants had been tried, convicted and sentenced for offences committed in February 2014 at a time when the Misuse of Drugs Act 5 of 2016, which brought about certain changes to the sentences set out in the Misuse of Drugs Act 1990, was not in existence. Thus, the need for the transitional provision referred to at paragraph 2 above.
4. The transitional provision referred to at paragraph 2 above qualifies in some way section 55 (2) (c) of the Misuse of Drugs Act 5 of 2016, which states that the repeal of the Misuse of Drugs Act 1990 shall not affect any penalty incurred in respect of any offence under the repealed Act.
5. What the Review Tribunal had stated in the first six paragraphs and the last paragraph of its decision gives the background to this appeal and sets out the decision appealed against:

“The convicts in this case Jean Francois Adrienne and Terence Robin Servina, have been found guilty of the charges of trafficking and conspiracy to traffick 47,345.1 grams (47 kg) of cannabis resin in case number CR 20/2014.

They were sentenced to life imprisonment on each count on 27th July 2015.

The convicts filed applications under section 51(2) of the MODA Act 5 of 2016 before the Sentence Review Tribunal to have the outstanding portion of their sentences reviewed.

Their applications were postponed on 29th September 2016 in view of the fact that their appeals on conviction and sentence were pending.

Their appeals were dismissed on 11th August 2017 and by letter dated 28th August 2017 their counsel asked for the review of their sentences to be completed.

We have considered their applications and their submissions as well as their counsel's submission before the Tribunal in addition to the recommendations of the Honourable Attorney General who objects to the applications.

...

We therefore order that the outstanding portion of their sentences be reviewed and reduced to a period of 20 years' imprisonment. Accordingly, we vary the outstanding portion of their sentences under section 51(9) (b) of the MODA.”

6. The Court of Appeal by its judgment of 11th August 2017 in Criminal Appeal SCA 25 & 26/2015 in dismissing the appeals of the Appellants on sentence had in fact considered the provisions of the Misuse of Drugs Act 5 of 2016, which came into operation on the 20th April 2016 and determined that there was “*no basis for interfering with the sentence of the Appellants for life imprisonment imposed by the trial court*”. There had thus been a review of the sentence imposed by the trial court by the Court of Appeal.
7. It must be borne in mind that the Review Tribunal after considering an application for review is empowered to confirm the current sentence in accordance with section 51(9) (a) of the Misuse of Drugs Act 5 of 2016.
8. I am therefore surprised that the Review Tribunal had thought it fit to review a judgment on sentence by the Court of Appeal, which had already reviewed the order on sentence of the Supreme Court, having taken into consideration the provisions of the Misuse of Drugs Act 5 of 2016 which had brought about changes to the sentences

laid down in the Misuse of Drugs Act 1990. There is nothing in the order of the Review Tribunal to indicate that they had looked into the judgment of the Court of Appeal despite having been conscious of the fact that there had been an appeal by the Appellants against their convictions and sentences to the Court of Appeal and that the appeals had been dismissed. In this regard, see paragraph 5 above.

9. Certainly section 51 (2) of the Misuse of Drugs Act 5 of 2016 does not postulate a second review by the Review Tribunal of a sentence and more so a review of a sentence of the Supreme Court already confirmed by the Court of Appeal after having taken into consideration the provisions of the Misuse of Drugs Act 5 of 2016. It would have been proper for the Review Tribunal to review the sentence, if the Court of Appeal decision was prior to the date on which the Misuse of Drugs Act 5 of 2016 came into operation, namely 20th April 2016.

10. I am therefore of the view that the Review Tribunal erred and acted upon a wrong principle in reviewing a sentence confirmed by the Court of Appeal and reducing the period of imprisonment to 20 years. However, taking into consideration the fact that what arose in this case was a novel situation, the fact that section 51 of the Misuse of Drugs Act 5 of 2016 is only a transitional provision, the fact that the sentence after review had been reduced to 20 years' imprisonment by the Review Tribunal giving hope to the Appellants of a reduction in their sentences and more so because Counsel for the Respondent submitted at the hearing before us, that it would not be fair to maintain the sentence of life imprisonment, I do not intend to maintain the sentence of life imprisonment confirmed by the Court of Appeal and quash the sentence of 20 years imprisonment rendered by the Review Tribunal.

11. In the circumstances I dismiss the appeals of both Appellants and maintain the sentence of 20 years imprisonment.

A. Fernando (President)

I concur:.

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M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 August 2020