

**IN THE COURT OF APPEAL OF SEYCHELLES**

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**Reportable/ Not Reportable / Redact**  
[2021] SCCA 43  
SCA CR 02/2020  
(Appeal from CR 14/2018)

In the matter between

**ELIZABETH THELMA CECILE**  
*(rep. by Mr. Clifford Andre)*

**Appellant**

and

**THE REPUBLIC**  
*(rep. by Mr. Hemanth Kumar)*

**Respondent**

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**Neutral Citation:** *Cecile v R* (SCA CR 02/2020) [2021] SCCA 43 (Arising in CR 14/2018)  
**Before:** Fernando, President, Robinson JA, Dingake JA  
**Summary:** Appeal against sentence in a case of importation of heroin  
**Heard:** 2 August 2021  
**Delivered:** 13 August 2021

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**ORDER**

Appeal against sentence of imprisonment dismissed.

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**JUDGMENT**

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**FERNANDO PRESIDENT**

1. The Appellant has appealed against the sentence of 9 years' imprisonment imposed on her on 31 January 2020, after her conviction for conspiracy to import and importation of heroin having a net total weight of 204.1 grams containing 126.5 grams of pure heroin. She had been sentenced to a term of nine years' imprisonment on each of the two counts but the learned Sentencing Judge had ordered that the sentences are to run concurrently.

2. The learned Sentencing Judge had taken into consideration the age of the Appellant (43 years), that she has a child, that she was a first offender and that there are no aggravating circumstances as the quantity of the controlled drug was below 250 grams. In making reference to the latter, the learned Sentencing Judge had erred in failing to take into consideration that there was “*the presence and degree of a commercial element in the offending, particularly where controlled drugs have been imported into Seychelles*” which according to section 48(1) of MODA 2016 is one of the aggravating factors that support a more serious sentence for offences under MODA. It is in relation to the offence of trafficking, that less than 250 grams of heroin is not considered as aggravated in nature. The Appellant had thus stood to benefit from the mistake made by the learned Sentencing Judge.
  
3. The learned Sentencing Judge had said in passing sentence: “It is clear from the evidence however that the 3rd convict (*Appellant*) was the mastermind of the said operation and the one who paid for the ticket and accommodation of the 1<sup>st</sup> convict who had agreed to carry the controlled drug on her into the Seychelles. She had also arranged for the drug to be collected by her brother the 2<sup>nd</sup> convict when the 1<sup>st</sup> convict arrived in the Seychelles. It is clear that she would have benefitted greatly had the importation succeeded, having taken no risks at all herself. The probation report recommends deterrent punishment.” One of the most serious aggravating factors in this case is the evidence accepted and commented upon by the Trial Judge in his judgment, that it was the Appellant who met the 1<sup>st</sup> convict, the courier, in South Africa prior to the 1<sup>st</sup> convict leaving South Africa and giving her the heroin and instructing her how to carry it. The Appellant had told her that she should put the heroin inside three durex condoms and place it inside her vagina using a cream that she had given her. In acting in this manner, the Appellant appears not to have had any qualms in putting the life of the 1<sup>st</sup> convict in danger, for her benefit. It is also clear from the evidence that the Appellant had

made use of the 1<sup>st</sup> convict, who was in desperation to get some money, by being a courier.

4. The MODA 2016 gives guidelines that courts should follow in sentencing a person convicted of an offence of importation of class 'A' drugs. Section 47(5) of MODA 2016 provides 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 offences of that kind. The 2nd schedule of MODA 2016 provides, for punishment of importation of controlled substances into Seychelles. For importation of class 'A' drugs (such as heroin and cocaine), the maximum sentence is life imprisonment or a fine of SCR 1 million. The minimum sentence for the aggravated offence of importation of class 'A' drugs is 20 years' imprisonment. Thus, we find that the sentence imposed on the Appellant is even below the indicative minimum.
5. The Respondent in her Written Submissions has made reference to the case of **Osama Brandon Casime & Hifa Noura Casime V The Republic - SCA 7 & 8 of 2019** where this Court during the April 2020 session confirmed the sentence of 10 years imprisonment imposed by the Trial Court on a person convicted of importing 141.2 grams, containing 69.19 grams of pure heroine. The quantity and quality of heroine imported by the Appellant in this case is very much more, than the above-mentioned case.
6. It is trite law that an appellate Court will not interfere with a sentence imposed by the trial court unless there are the, often repeated 4 established grounds for doing so. None of those grounds exist in this case. This Court had also pronounced that it would not interfere with a sentence unless it is 'manifestly harsh and excessive'. In this case I am of the view that the Appellant who was liable to have been given a sentence of life imprisonment, had got away lightly and certainly the sentence of 9 years cannot be said to be manifestly harsh and excessive. It is after a careful

examination of all the circumstances relating to a particular offence, a Sentencing Judge will examine sentences imposed by courts in other cases, always bearing in mind that no two cases are identical despite the offence and the type of controlled drug may be the same. There will always be differences in the quantity of drugs, its quality and purity, the manner adopted to carry out the offence and the antecedents of the accused and thus there can never be a mathematical exactness in consistency of offences, which call for a parity of sentencing. Therefore, a sentence imposed in a previous case, although may be considered, shall never bind the Sentencing Judge. The only consideration being that the sentence must fit the offence and the offender.

7. I therefore dismiss the appeal.

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Fernando President

I concur

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Robinson JA

I concur

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Dingake JA

Signed, dated and delivered at Ile du Port on 13 August 2021.