

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**HAMID MARMARANI**

Criminal Side No. 2 of 2007

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Attorney General Mr. R. Govinden for the Republic

Mrs. Amesbury for the Accused

**SENTENCE**

**Gaswaga, J**

[1] The accused stands now before me convicted of the offence of '*Being in possession of a controlled drug, contrary to section 6 read with section 26(1) of the Misuse of Drugs Act 1990 as amended by Act 19 of 1994 and Punishable under section 29 and the Second Schedule referred thereto in the Misuse of Drugs Act 1990 as amended by Act 14 of 1999*', to which he pleaded guilty. The particulars alleged that, '*Hamid Marmarani on the 4<sup>th</sup> of January, 2007 at Union Vale, Mahe had in his possession a controlled drug, namely 1 kilogram and 863.5 grams of cannabis resin.*'

[2] It will be recalled that the accused who entered Seychelles on a boat had been found at Union Vale by the police in the company of two Seychellois men. A search done by the police on the accused's body revealed the slabs

of cannabis resin weighing 1 kilogram and 863.5 grams which had been hidden in his trousers.

[3] Mrs. Armesbury has urged this court to impose the minimum sentence of five (5) years prescribed by the law out of the maximum set at fifteen (15) years because the accused was a first offender who has saved the witnesses from giving evidence as well as the courts time by pleading guilty, and further, that he had stayed on remand for a period of forty one (41) months. In addition, to that the accused was a foreigner who needed to return to his home country to resume his family responsibilities.

[4] The court however takes particular interest in the fact that the plea of guilty has been tendered after forty one (41) months when most of the prosecution evidence has been adduced and recorded.

[5] In **R Vs Borkowski [2009] NSWCCA 102**, Howie, J at Page 32, set out some of the principles of general application which are to be applied by sentencing courts faced with a situation of giving a discount, as essentially prayed by Mrs. Armesbury, for a guilty plea. He stated that:

(a.) The discount for the utilitarian value of the pleas will be determined largely by the timing of the plea so that the earlier the plea the greater the discount.

(b.) *Some allowance may be made in determining the discount where the trial would be particularly complicated or lengthy.*

(c.) *There may be offences that are so serious that no discount should be given; where the protection of the*

*public requires a longer sentence.*

(d.) Generally the reason for the delay in the plea is irrelevant because, if it is not forthcoming, the utilitarian value is reduced.

*(e.) The amount of the discount does not depend upon the administrative arrangements or any practice in a particular court or by a particular judge for the management of trials or otherwise.”*

[6] The court is mindful of the effects of such illicit drugs to our society. Luckily, the drugs were impounded upon entering the country and therefore before reaching the market and or final consumers.

[7] Be that as it may, the accused has to be punished for the part he played in the whole criminal transaction. A consideration of all the above factors and sentences in recent cases similar to this one has been done.

[8] Accordingly the accused is sentenced to a term of **seven and a half (7<sup>1</sup>/<sub>2</sub>)** **years** in prison.

**The period spent on remand should count towards this sentence.**

**Right of appeal explained.**

**D. GASWAGA**

**JUDGE**

Dated this 28<sup>th</sup> Day of May, 2010