

REPUBLIC v LADOUCEUR

(2012) SLR 21

D Esparon for the Republic
J Camille for the accused

Sentence delivered on 26 January 2012 by

DODIN J:

The convict, Melitine Ladouceur has been convicted of one count of aiding and abetting the trafficking of a controlled drug, namely 1.523 kg of cannabis resin.

In mitigation counsel for the convict submitted that whilst the law has provisions for a mandatory minimum sentence of 8 years imprisonment, the court is empowered in cases where there are special circumstances to impose a sentence lower than the mandatory minimum sentence.

Counsel submitted that in this case, the accused was acquitted of the principal offence and was only convicted of the lesser secondary offence of being an accessory.

She is 44 years old and has no children and she is a first offender. She was self-employed and her business contributed to the development of the tourism industry. The evidence of the case showed that she was not the principal actor in the crime and that it is doubtful that she was the owner of the parcel in question although the circumstances had led to the parcel being deposited in her kiosk.

On the personal side, the convict is in poor health which has deteriorated during her time on remand. Counsel submitted two medical reports showing that the convict is suffering from degenerative disk disease, bronchial asthma, and chronic gastritis, and whilst she is in prison she is unable to keep her appointments for treatment or to follow the advice of the specialists regarding her treatment.

Counsel submitted that both sets of circumstances, namely the convict's medical problems and the circumstances of the commission of the crime with which she has been convicted, are peculiar to her special situation and warrant consideration by the court in imposing the lowest sentence possible.

Counsel referred the court to the case of *Jean Frederick Poonoo v Attorney-General* (2011) SLR 423 where the Court of Appeal stated that despite the law imposing a mandatory minimum sentence, the court is not bound to apply the provision in every case and the court should consider each case on its merits and apply the necessary discretion it has when determining the appropriate sentence that should be imposed.

I have carefully considered the submission made in mitigation on behalf of the convict. I have also carefully studied the medical reports for Dr Sinuhe Rodriguez and Dr Zia-ul-Hasan Rizvi both dated 23 January 2012 regarding the medical condition of the convict.

Indeed in the case of *Jean Frederick Poonoo v Attorney-General* (2011) SLR 423 the Court of Appeal dismissed the myth that the court cannot impose a sentence lower than the mandatory minimum set out by law.

I am satisfied that counsel has shown that in this case there are special circumstances to be considered in imposing a sentence on the convict; namely, her precarious medical condition which in my view can only be properly and effectively treated if she was not incarcerated or was given special treatment during her incarceration.

Secondly, the circumstances of the commission of the offence as rehearsed in the judgment delivered on 20 January 2012 indeed show that she was a secondary offender. However, that alone cannot be considered to be special circumstances but when considered together with her other personal circumstances I am satisfied that the mandatory minimum sentence of 8 years imprisonment would be harsh and excessive in her particular case.

I therefore impose a sentence of six years imprisonment on the convict. The convict can appeal against this sentence within 42 working days from today.