

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 07/2016

[2016] SCSC 482

THE REPUBLIC

versus

HUBERT SHANE HOAREAU

Accused

Heard: 27 June 2016
Counsel: Ms. Amanda Faure, State Counsel for the Republic
Mr. Clifford Andre Attorney at Law for the accused
Delivered: 8 July 2016

SENTENCE

Burhan J

[1] The convict Hubert Shane Hoareau, pleaded guilty to the offences of trafficking in a quantity of 487.2 grams of a controlled drug, namely Cannabis (herbal material) and possession of an apparatus for the administration of a controlled drug, charges framed under the Misuse of Drugs Act (MODA), CAP 133. The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.

- [2] In the case of *Cousin v R SCA 21 of 2013* and in the case of *Kelson Alcindor v R [2015] SCCA 7*, it was held that the Appellant should benefit from the change of law in his favour, along the principle of “*la peine la plus douce.*” – See *Aubeeluck Gangasing v The State of Mauritius [2010] UKPC 13*. The Appellants’ sentence in both cases were reduced to be in conformity with the amended law which was beneficial to the Appellants. Further Section 51 (2) of the new Act states outstanding sentences under the earlier Act must be reviewed in accordance with the new MODA.
- [3] Therefore, based on the aforementioned case law, this court will take into consideration the benefits applicable to the convict brought about by the change of law. Under the old law, the penalty for the offence set out in Count 1 was a mandatory term of life imprisonment.
- [4] Under the new Act, there is no mandatory term of life imprisonment for the said offence and the convict is liable to a maximum of 50 years imprisonment and a fine of SR 500,000. I further note from the facts before me that no aggravating circumstances as set out in section 48 of the new Act exist in this case. Therefore, as no aggravated circumstances exist, on consideration of the amendment to the Prisons Act brought about by Act 6 of 2016, the convict will benefit from the new amendment to the said Act in that he will be entitled to remission.
- [5] I have considered the plea in mitigation made by learned counsel for the convict. The quantity of controlled drug concerned in this case is 487.2 grams. The convict has pleaded guilty to both Counts without proceeding to trial, thereby saving the time of court and by doing so expressed remorse. The convict is a 1st offender. Having considered the plea in mitigation made on behalf of the convict I note the convict is 26 years of age, has expressed remorse and regret and undertakes not to repeat such offences.
- [6] Considering the fact that the charge of trafficking is based on the presumption and the quantity of controlled drug concerned is 487.2 grams of a Class B drug, I proceed to sentence the convict to a term of 2 ½ (two and a half) years imprisonment and a fine of SR 10/000/ (ten thousand) on Count 1. On Count 2, I proceed to sentence the convict to a term of 1 year imprisonment to run concurrently with the term of imprisonment in Count 1 and a fine of SR 5000 ((five thousand).

- [7] In default of payment of the total fine of SR 15,000 (fifteen thousand) the convict is to serve a term of 6 months imprisonment, to run consecutive to the term of 2 ½ years imprisonment imposed herein.
- [8] Time spent in remand to count towards sentence. I make further order that the convict is entitled to remission as the offence is not aggravated in nature.
- [9] Copy of this order to be attached to the warrant of commitment.

Signed, dated and delivered at Ile du Port on 8 July 2016

M Burhan
Judge of the Supreme Court