

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 83/2014**

[2016] SCSC 588

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**THE REPUBLIC**

versus

**CHARLES FABIEN**

First Accused

**GERARD MARDAY**

Second Accused

**SYLVESTER BARREAU**

Third Accused

**ALEJANDRO GARRAZAN**

Fourth Accused

**ANDRE NANCY**

Fifth Accused

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Heard: 9 August 2016  
Counsel: Ms. Brigitte Confait, State Counsel for the Republic  
Mr. Leslie Boniface Attorney at Law for the first accused  
Mr. Danny Lucas Attorney at Law for the second accused  
Mr. Nichol Gabriel Attorney at Law for the third and fifth accused  
Mr. Divino Sabino Attorney at Law for the fourth accused  
Delivered: 10 August 2016

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**SENTENCE**

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**Burhan J**

- [1] The convict Sylvester Antoine Barreau, pleaded guilty to the offence of trafficking in a quantity of 481.1 grams of a controlled drug namely Cannabis, a charge 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 The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.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, it is the duty of this court in passing sentence to ensure the benefits applicable to the convict brought about by the change of law are considered.
- [4] Under the old law, the penalty for such an offence was a mandatory term of life imprisonment. Under the new Act however 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. Further I note from the facts before me that no aggravating circumstances, as set out in section 48 of the new Act exists 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 481.1 grams. The convict has pleaded guilty, thereby saving the time of court and by doing so expressed remorse. The convict is a 1<sup>st</sup> offender. Having considered the plea in mitigation made on behalf of the convict, I

note he is 50 years of age and the father of 3 children. Most importantly I note that the convict has co-operated with the NDEA officers resulting in the arrest and successful conviction of one of the principal offenders in the case, the 1<sup>st</sup> accused.

[6] Considering the above mentioned strong mitigatory factors and the fact that the controlled drug concerned is a Class B drug, I proceed to sentence the convict to a term of 2 (two) years imprisonment and a fine of SR 10,000/ ( ten thousand). In default of payment of fine, the convict is to serve a term of 6 months imprisonment to run consecutive to the term of 2 years imprisonment imposed herein.

[7] 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.

[8] Copy of this order to be attached to the warrant of commitment.

Signed, dated and delivered at Ile du Port on 10 August 2016

  
M Burhan  
**Judge of the Supreme Court**