

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 10/2015

[2016] SCSC 589

THE REPUBLIC

versus

ROY JULIENNE

First Accused

RON POUPONNEAU

Second Accused

Heard: 10 August 2016
Counsel: Mr. Hemanth Kumar Assistant Principle State Counsel for the Republic
Mr. Basil Hoareau Attorney at Law for the 1st Accused
Ms. Karen Domingue Attorney at Law for the 2nd Accused
Delivered: 10 August 2016

SENTENCE

Burhan J

- [1] The convicts Roy Julienne and Ron Pouponneau, pleaded guilty and were convicted on the charge of trafficking in a quantity of 16,863.9 grams of Cannabis (herbal material), 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 The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.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.
- [5] I further note however that the quantity of controlled drug is over 1.5 Kg and hence the offence is aggravated in nature. Therefore the benefit of remission as brought about by the change in law will not benefit the convict.
- [6] I have considered the plea in mitigation made by learned counsel for the 1st convict namely that the 1st convict has pleaded guilty, 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 he is 40 years of age and the father of 2 children. Learned counsel for the 2nd Convict made similar submissions in mitigation and the 2nd convict was 31 years of age, married and the father of two children both minors. She further stated he had been maintaining his family and his father, at the time he was arrested and charged and had co-operated with the NDEA in their investigation.
- [7] Considering the above mentioned mitigating factors and the fact that the controlled drug is a Class B drug while at the same time considering the large quantity of controlled drug taken into custody 16, 863.9 grams, I proceed to sentence each convict to a term of 7

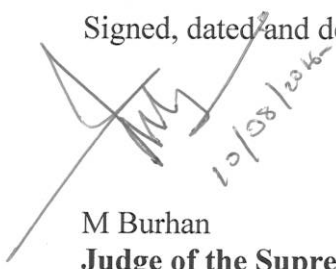
(seven) years 6 (six) months imprisonment and a fine of SR 25,000/ (twenty five thousand),
In default of payment of the fine of SR25, 000/ each convict is to serve a term of 6 (six)
months imprisonment to run consecutive to the term of 7 years 6 months imprisonment
imposed herein.

each.
10-8-2016

[8] Time spent in remand to count towards sentence. I make further order that both convicts
are NOT entitled to remission as the offence is 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 10 August 2016



10/08/2016

M Burhan
Judge of the Supreme Court