

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 70/2013

[2016] SCSC 716

THE REPUBLIC

versus

RONNY MARIA

Accused

Heard:

Counsel: Mrs. Lansinglu Rongmei, Assistant Principal State Counsel for the
Republic
Mr. Nichol Gabriel Attorney at Law for the accused

Delivered: 3 October 2016

SENTENCE

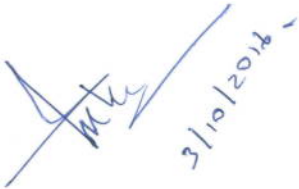
Burhan J

[1] The convict Ronny Andre Marie pleaded guilty to the offence of trafficking in a quantity of 2.20 (purity 1.22) grams of a controlled drug namely Diamorphine (Heroin), 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 The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.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 *AubeeluckGangasing v The State of Mauritius [2010] UKPC 13*. The Appellants' sentences 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 and the law as contained in the new Act, it is the duty of this court to ensure that the convict benefits from the changes brought about by the new law.
- [4] Under the old law the convict was liable ^w on to a minimum mandatory penalty of 20 years imprisonment and a fine of SCR 500,000 for the said offence. Under the new Act there is no minimum mandatory term of imprisonment for such an offence. I further note from the facts before me that aggravating circumstances as set out in section 48 of the new Act, do not exist in this case. Further as the quantity is below 250 grams, the offence cannot be considered to be aggravated in nature. Therefore the convict will be entitled to the benefit of remission under the new Act and will not be subject to a minimum mandatory penalty of imprisonment nor an indicative sentence.
- [5] I have considered the plea in mitigation made by learned counsel for the convict. The convict has pleaded guilty without proceeding to trial, thereby saving the time of court and by doing so expressed remorse. The convict is a first offender. Having considered the plea in mitigation made on behalf of the convict, I observe the convict in this case is 39 years of age and a father of two children and has expressed remorse and regret by pleading guilty at the first instance. I have also considered the fact that the pure quantity of heroin taken into custody is below 2 grams.

- [6] On consideration of all the aforementioned factors, I proceed to sentence the convict to a term of 12 (twelve) months imprisonment and a fine of SR 10.000/. In default of payment of the fine the convict will serve a term of 3 months imprisonment which will run consecutive to the term of 12 months imprisonment imposed in this case. Time spent in remand to count towards sentence.
- [7] The convict is entitled to remission at the discretion of the Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 3 October 2016

A handwritten signature in blue ink, appearing to be 'M Burhan', is written over a diagonal line. To the right of the signature, the date '3/10/2016' is written in blue ink.

M Burhan
Judge of the Supreme Court