

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 01/2014

[2016] SCSC 820

THE REPUBLIC

versus

PAUL AH KONG

Accused

Heard: 26 October 2016

Counsel: Mr. George Thachett, Assistant Principal State Counsel for the Republic
Mr. Elvis Chetty Attorney at Law for the accused

Delivered: 26 October 2016

SENTENCE

Burhan J

- [1] Paul Ah Kong has pleaded guilty to the offence of trafficking in a quantity of 115 grams of cannabis a controlled drug, a charge framed under the Misuse of Drugs Act (MODA) CAP 133. The said Act has now been repealed by the new Misuse of Drugs Act 5 of 2016 (herein after referred to as the new Act) with saving clauses as contained in Section 55 (1) of the new Act.
- [2] It was held 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 principles of "*la peine la plus douce*". The Seychelles Court of Appeal proceeded to reduce the sentences in conformity with the amended law which was beneficial to the Appellants in the said case.

- [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 the law are considered. I note that the quantity concerned is 115 grams therefore the benefit of remission as brought about by the change law will benefit the convict in the event of him having to serve a term of imprisonment. Under the old law, the accused was liable to a term of 16 years minimum mandatory term of imprisonment. However, the new law has done away with the minimum mandatory term of imprisonment in respect of such offences.
- [4] I have considered the plea in mitigation made by learned counsel for the convict. The quantity of controlled drug in this case is 115grams. The convict has pleaded guilty 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 note that he is 32 years of age and a father of an 8 month old child.
- [5] Considering the aforementioned factors in mitigation and the fact that the controlled drug is a Class B drug, I proceed to sentence the convict to a term of 2 years imprisonment and upon consideration of the plea in mitigation; I make order that the term be suspended for a period of 2 years. I make further order that he pay a fine of Seychelles Rupees 15,000/. In default of payment of the said fine he will serve 6 months imprisonment.
- [6] Nature of the suspended term is explained to the convict in open court.

Signed, dated and delivered at Ile du Port on 26 October 2016



M Burhan
Judge of the Supreme Court