

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO41/2016

[2017] SCSC 174

THE REPUBLIC

versus

DESIRE CESAR

Accused

Heard: 21 February 2017

Counsel: Mrs. L. Rongmei, Assistant Principal State Counsel for the Republic
Mr. N. Gabriel for the accused

Delivered: 21 February 2017

SENTENCE

Vidot J

[1] The accused was charged as follows;

Count 1

Statement of Offence

Cultivation of a controlled drug, namely cannabis plants. Contrary to section 6(2) read with section 21(3) and punishable under the Second Schedule of the Misuse of Drugs Act 2016.

Particulars of Offence

Desire Cesar, a 51 year old farmer of Grand Anse, Praslin, on 13th July 2016, at around 14.05 hrs. was found cultivating 22 cannabis plants in a hidden area adjacent to his farm at Amitie, Praslin.

In the Alternative to Count 1

Count 2

Statement of Offence

Trafficking in a controlled drug namely cannabis herbal materials, contrary to Section 7(1) and punishable under the Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of Offence

Desire Cesar, a 51 year old farmer of Grand Anse, Praslin, on 13th July 2016, at around 14.05 hrs. in an area adjacent to his farm at Amitie, Praslin, was found trafficking in a controlled drug, namely cannabis herbal materials with a total weight of 1,514.8 grams.

- [2] The Accused pleaded not guilty to the first count but guilty to the alternative count 2 for the offence of trafficking. Upon his on plea on the latter count he was accordingly convicted. The first count shall just remain on file.
- [3] In mitigation, Mr. N. Gabriel, Learned attorney for the accused prayed the court to show leniency on his client who he said had pleaded guilty and thereby saving the precious time of the court. He stated that accused is a family man who owns a farm with animals and crops and that he is remorseful. Learned Counsel begged for leniency from the court and called for a non-custodial sentence. He urged the court to consider the spirit of Misuse of Drugs Act 2016 (MODA 2016) in not imposing a harsh sentence. In passing sentence this court will give full consideration to the mitigation by Counsel.

- [4] In passing sentence I remind myself that pursuant to Section 7(4) and section 48 of MODA 2016, the offence committed by the accused is aggravated in nature since the total amount of drugs (cannabis) exceeds 1.5kg. This is compounded by the fact that the accused has previous conviction for drug related offences. The Second Schedule of MODA 2016 prescribes an indicative minimum of 15 years and a maximum of 50 years and fine of SR500,000/-. I take note that the amount of drugs is just above 1.5kgs and that the weight included not only the leaves of the plants but also the stems, but nonetheless in terms with Section 48(1)(a), such amount imply that there is a commercial element in the offence, and therefore makes it aggravated.
- [5] In the circumstances, I proceed to sentence the Accused to 6 years imprisonment with a fine of SR25,000/- which sum has to be paid before the completion of the sentence. If there is default in payment of the fine, the accused shall serve an additional 3 months above the aforementioned prison term. Any time spent on remand shall be deducted against the sentence. Since the offence is one that is aggravated in nature the Accused shall not be entitled to remission.
- [6] The Accused has a right of appeal within 30 days of this sentence.

Signed, dated and delivered at Ile du Port on 21 February 2017

M Vidot
Judge of the Supreme Court