

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 11/2016

[2016] SCSC 298

THE REPUBLIC

versus

LEONARD JEAN ADRIENNE
Accused

Heard: 11 April 2016
Counsel: Mr Khalyaan Assistant State Counsel for the Republic
Mr Clifford Andre for the accused
Delivered: 5 May 2016

SENTENCE AND REASONS FOR SENTENCE

Mckee J

[1] The Accused was originally charged with the offence of Trafficking in a Controlled Drug contrary to the Misuse of Drugs Act. Following thereon, and after due consideration, the Charge Sheet was amended to include the additional and alternative charge of Possession of a Controlled Drug [that is, “simple possession”]. On 11th April 2016 both charges were read in English and in Creole to the Accused who pleaded Not Guilty to the substantive charge of Trafficking in a Controlled Drug but Guilty to the alternative and lesser charge of Possession of a Controlled Drug. These pleas were acceptable to the Prosecution. The Prosecution gave Brief Facts of the offence and these were read out in Court in English and in Creole and accepted by the Accused. The dangerous drugs in this case comprised 3

packets containing Heroin [diamorphine] with a total weight of 4.25 grams. These drugs had a purity of 62% hence the purity content of the mixture weighed 2.65 grams. Thereafter I found the Accused Guilty of the Charge of Possession of a Controlled Drug [simple possession] and CONVICTED him of this Charge. I was advised by the Prosecution that for the purposes of this offence this Accused was a first offender. Defence Counsel mitigated on behalf of the Accused. The Brief Facts and the Mitigation appear in the Notes of Proceedings.

- [2] In assessing sentence I took into account the nature of the charge, namely simple possession, the Plea of Guilty, the circumstances of the case as set out in the Brief Facts, the Plea in Mitigation and the fact that the Accused was to be considered a first offender. I also took into account that the Accused pleaded Guilty to the lesser charge at the first available opportunity.
- [3] The offence was uncovered when Agents of the NDEA , acting on information, went to the property of one Elvis Radegonde in La Passe, La Digue. The Accused was found on the veranda of the house and on seeing the Agents elected to run away but was apprehended. During his flight the Accused was seen to drop three pieces of cling film, which packets contained the heroin mixture.
- [4] In mitigation, I was advised that the Accused was a man of 37 years of age, a diver, and has five children three of whom are minors and depend on him. Counsel suggested that since diving should provide a good income, in all the circumstances, a monetary penalty could be an appropriate sentence in this matter, also bearing in mind the recent developments in the alternative methods of disposal for this category of offence.
- [5] Heroin is a 'hard' drug and this is a major factor in this matter. There were three separate packets. The amount of mixture involved cannot be considered 'minute' and there is a high heroin content. Throughout mitigation there is no mention that the drugs involved were in the possession of the Accused for his own purposes. There is no suggestion that the Accused considers himself to be either drug dependent or a drug user. There is no suggestion that the Accused has ever voluntarily sought treatment for drug dependence with a view to better looking after his family. There is no submission that the Accused

would make himself available for medical examination to gauge his dependency, if any, on heroin.

- [6] In my opinion, a monetary penalty, whether paid immediately in full, or, as seems to be suggested by Counsel, on an instalment basis, is not appropriate. It does not reflect the seriousness of this offence. In my view the appropriate sentence is one of imprisonment. If this case had gone to full trial an appropriate sentence would have been sixteen months imprisonment. However I give the Accused a 25% discount in view of his plea and other mitigating factors.
- [7] The Accused is sentenced to Twelve [12] months imprisonment.
- [8] The dangerous drugs will be confiscated.
- [9] Any time spent on remand will be taken into account when the ultimate date of release from prison is calculated.

Signed, dated and delivered at Ile du Port on 5 May 2016

A handwritten signature in black ink, appearing to read 'C McKee', with a large, stylized flourish at the end.

C McKee
Judge of the Supreme Court