

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 63/2010**

**[2017] SCSC**

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**THE REPUBLIC**

versus

**SONNY PROSPER**

First Accused

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Heard:

Counsel: Miss Faure, State Counsel for the Republic  
Mr Chetty, for the first accused

Delivered: 27 July 2017

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**SENTENCE**

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**Robinson J**

[1] The First Accused, (now convict), has been convicted of the following offence —

Count 1

*"possession of controlled drug namely 395.8 grams of cannabis herbal material which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purposes of trafficking contrary to section 5 read with section 14 (d) and section 26 (1) (a) of the Misuse of Drugs Act CAP 133 and the second*

*Schedule referred thereto in the said Act."*

- [2] The court has considered section 48 of the Misuse of Drugs Act, 2016, (Act 5 of 2016), and found no factors that support a more serious sentence.
- [3] The court has considered section 49 of the Misuse of Drugs Act, 2016, (Act 5 of 2016), in relation to the factors that support a reduction in sentence. Factors (f) and (g), of section 49, are relevant, to this sentence, and have been put before this court, by learned counsel, in mitigation, namely, (f) *"the absence of prior convictions ..."*; and (g) *"the fact that no other person was involved in or directly harmed by the offence"*. The court has *proprio motu* considered the delay in completing this case.
- [4] The following other factors were put before this court in mitigation —
- (1) the convict is 59 years old;
  - (2) the convict has two children, and one of his children is 6 years old;
  - (3) the convict is the sole bread winner of the family.
- [5] In seeking to protect society the court must not lose sight altogether of the interests of the convict. Important as the factors of deterrence, public expectations and prevalence of a particular offence undoubtedly are, they must not be permitted to weigh so heavily as to negate other factors which lessen the gravity of the offence in the particular circumstances of the case before the court.
- [6] According to the evidence of the analyst, with respect to the first count, the herbal material was found to be cannabis. The weight of the cannabis herbal material was 395.8 grams.
- [7] Counsel submitted at sentencing that the convict should be sentenced under the Misuse of Drugs Act, 2016, (Act 5 of 2016), rather than under the version in effect at the time of the offence and formal charge. The version in effect at the time of the offence and formal charge provides for more severe consequences to his acts. The court agrees.
- [8] In passing sentence the court has considered the Misuse of Drugs Act, 2016, (Act 5 of

2016); the *GUIDE TO SENTENCING UNDER THE NEW MISUSE OF DRUGS ACT*; the other factors put before this court in mitigation; and the delay in completing this case. The court sentence the convict as follows —

to a period of 6 months imprisonment on count 1 and to a fine of five thousand rupees, which fine shall be paid to the Republic. Time spent on remand shall count towards sentence.

[9] The convict may appeal against the judgment and sentence.

Signed, dated and delivered at Ile du Port on 27 July 2017

F Robinson  
**Judge of the Supreme Court**