

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 02/2018

[2018] SCSC 1029

THE REPUBLIC

versus

**DAVE CONFAIT
CHANTAL VALERY MOUSTACHE**

Accused

Heard: 13 November 2018

Counsel: Mr. K. Karunakaran, State Counsel for the Republic
Mr. C. Andre for the accused

Delivered: 15 November 2018

SENTENCE

Vidot J

[1] The Accused is charged with the following;

Count 1

Statement of Offence

Trafficking, in controlled drug, namely heroin (Diamorphine), contrary to Section 9(1) read with Section 19(1)(c), and punishable under Section 7 (1) of the Second Schedule of the Misuse of Drugs (Cap 133).

Particular of Offence

Dave Confait of Belonie, on the 22nd December 2017 at around 0930hrs, at the residence of one Celine Ladouce in Petit Paris, was found to be in possession of a controlled drug, namely heroin (Diamorphine) having a total weight of 19.3g with a purity of 64% (heroin content of 12.35g), giving rise to the presumption of having possessed of the said controlled substance with the intent to traffic in the said drug.

Count 2

Statement of Offence

Obstruction of justice contrary to Section 35(1)(a) and punishable under the Second Schedule of the Misuse of Drugs Act (Cap 133)

Particulars of Offence

Chantal Moustache of Petit Paris, on 22nd of December 2017 at around 0930hrs, at the residence of one Celine Ladouce in Petit Paris, obstructed Anti Narcotics Bureau Officers in the performance and exercise of their powers and functions under the Misuse of Drugs Act (Cap 133) by preventing from the gaining access to the room where one Dave Confait was suspected to be trafficking in the controlled substance.

- [2] Both Accused pleaded guilty and was accordingly convicted as charged.
- [3] In mitigation, Counsel for the Accused pleaded for leniency stating that they have pleaded guilty and thereby saving the court's precious time and showing remorse. He stated that the drug was for the personal consumption of the first Accused. He also note that the second Accused co-operated with the Police.

- [4] As far as the second accused is concerned Counsel has referred to the case of **R v Brenda Figaro 30/2017 SCSC 718** and that of **R v Ernesta 65/2016 SCSC 872**. In these cases which involved crimes committed in breach of Section 16(6) which is a somewhat different from that with which the second Accused stands charged. That section deals with uttering or sending threat to or in any way, intimidates or menaces NDEA agent or any member of his family.
- [5] I have taken into account all mitigating circumstances.
- [6] **Blackstone,s Criminal Practice** (2012) paragraph E 12 P 2148, argued that a guilty plea would in effect earn an accused a reduction in sentence as it saves time of the court and reduces considerable cost and in case of an early plea, also saves inconvenience of victims and witnesses to give evidence before Court, a furthermore that “ *a reduction should be a proportion to the total sentence imposed calculated by reference to the circumstances in which the guilty plea was indicated, in particular at what stage of the proceedings.*” A guilty plea normally affords a credit of one third of the sentence that the court would have otherwise be imposed.
- [7] I also bear in mind that the classic principle of sentencing is deterrence, prevention, rehabilitation, reformation and retribution; vide **Lawrence & Another v Republic [1990] SLR 47**.
- [8] However, drugs especially the traffic and use of heroin is a major problem in Seychelles. It is destructive to those who are using it and as a result has become a problem of mammoth proportion and it is costing the state enormously, not only in monetary terms but in the rise in crime and the area of employment. Now, many drug abusers who would otherwise be well abled and in employment and making a positive contribution to the state are idle and causing problems for those around them. Albeit that the first Accused had the drugs for his personal consumption, as stated by his Counsel, the problem remains the same; there is always someone that will at some stage need to be taken care of by the state.
- [9] Furthermore law enforcement should be allowed to conduct their work without any obstruction and threats. They should feel and be in security.

[10] Having taken into account all the above, I proceed to sentence the Accused as follows;

(a) The first Accused shall undergo a term of four (4) years imprisonment

(b) The second Accused to 4 months imprisonment suspended for 1 year and to pay a fine of SR25,000/- and in default to 4 months imprisonment. The fine should be paid by 15th February 2019.

[11] Time that the first Accused has spent on remand shall be deducted against the sentence.

[12] If unsatisfied with the sentence the accused may appeal against the same within 30 working days hereof.

Signed, dated and delivered at Ile du Port on 15 September 2018



M-Vidot

Judge of the Supreme Court