

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 7/2017

[2018] SCSC 218

THE REPUBLIC

versus

NEDY MICOCK & ORS
Accused

Heard: 5 March 2018
Counsel: Ms Confait for the Republic
Mr Camille together with Mr Andre for the Accused persons

Delivered: 5 March 2018

SENTENCE

Twomey CJ

The First and Second Convicts have been found guilty of the following offences under the earlier Misuse of Drugs Act, 1995 (CAP 133) that was in force in March 2015:

Count 1: Importation of a quantity of 35, 923.90 grams (heroin content 23,474.90 grams) of a Class A drug heroin.

Count 2: conspiracy to commit the offence of the importation of a quantity of 35, 923.90 grams (heroin content 23,474.90 grams) of a Class A drug heroin.

- [1] I have considered the submissions made by learned counsel for both the accused in respect of the mitigation of the sentence of the two convicts.
- [2] The First Convict is forty-three years old and has two dependent children aged fifteen and seven years.
- [3] The Second Convict is thirty-three years of age, with two families, one in Tanzania and one in Seychelles. He has three dependent children, a one year old child in Tanzania and an eleven year old and 6 year old child in Seychelles.
- [4] The 1995 Misuse of Drugs Act, which was applicable to the convicts in this case, makes it clear that for importation of a controlled drug where the quantity is more than 250 grams the sentence prescribed is a mandatory life imprisonment. The new Misuse of Dugs Act was amended in September 2016 and the sentencing regime altered.
- [5] In the case of *Cousin v R* SCCA 2 (22 April 2016) and *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 principle of “la peine la plus douce.” The Appellants’ sentence in both cases were reduced to be in conformity with the new law which was beneficial to the Appellants. Further Section 51 (2) of the new Act makes provision for outstanding sentences under the earlier Act to be reviewed in accordance with the new MODA.
- [6] As was stated by Burhan J in *R v Tarani and ors* [2017] SCSC 11, it is the duty of this court to ensure that the benefits applicable to a convict brought about by the change of law are considered when passing sentence. However, the only benefit in the present case to which both convicts are entitled to under the new law, is that the punishment for importation and trafficking in over 250 grams of controlled drug is not a mandatory life imprisonment but a liability to a maximum term of life imprisonment.
- [7] In other words the new regime makes it clear that life imprisonment is to be considered only as the maximum sentence to be imposed but courts are free to impose a sentence lower than the maximum when circumstances demand.

- [8] I have in this regard considered the mitigation submissions but cannot see any special or exceptional circumstances that could be considered to mitigate the severe sentence indicated in the law.
- [9] On the contrary many aggravating factors exist. The quantity and quality of the controlled drug is well over the prescribed amount of 250 grams set out in the Second Schedule to the Misuse of Drugs Act. Both convicts have been found guilty and convicted of the importation of a very large quantity of a Class A drug heroin approximately 36 kilograms. The quantity itself clearly indicates the presence of a commercial element to the crime.
- [10] Moreover, it is clear that the two accused persons conspired with each other and others and were a well organised gang involved on a very large scale in the trafficking of the controlled drug. Their careful and sophisticated planning and their involvement and payment of persons at all the different levels of the community to ensure the execution of their plan indicates the extent they were willing to go to make their money. They evaded arrest for a number of years until the law caught up with them in Kenya and they were extradited to Seychelles.
- [11] The devastating effect of heroin on the Seychellois population is apparent to all. The youth of Seychelles is being poisoned by drugs seemingly readily available, brought in by unscrupulous persons such as these convicts. They have no regard for the overwhelming consequences of their acts. Their greed at the expense of the effects of their trade including a lost youth and work force; the toll on Seychelles and the tax payer to treat and rehabilitate drug abusers, the cost of education programmes for the prevention of drug abuse; and efforts to intercept and prevent the trafficking and importation of drugs and prevent abuse is lost on them. They are oblivious to the pain and havoc they wreck on individuals, families and the community.
- [12] In *R v Jean Francois Adrienne & Anor* the Supreme Court sentenced both convicts to life imprisonment for the offence of trafficking in a quantity of 47,435.0 grams of cannabis, a Class B drug. The said sentence was unanimously upheld by the Seychelles Court of Appeal. In the present case we are dealing with a large quantity of a very

addictive drug, heroine, with worse effects. In *Tarani* (supra) life imprisonment was imposed on a conviction for the importation of 97,795.1 grams of a Class A drug with heroin content 65,211.4grams.

[13] I have not seen any remorse shown by the convicts and I am not convinced that they will not repeat this offence if a moderate sentence of imprisonment was meted out to them. They are not young persons who might be rehabilitated. The court has a duty to protect society and to keep persons endangering society away from society.

[14] I am therefore satisfied that a serious deterrent needs to be set for drug importers and this is a fit and proper case to impose a term of life imprisonment on each of the convicts.

[15] I therefore proceed to sentence each convict as follows:

[16] The First Convict Nedy Conrad Rodney Micoock

Count 1- sentenced to Life imprisonment

Count 2- sentenced to Life Imprisonment

The terms of imprisonment in the two counts to run concurrently.

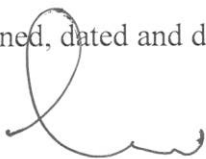
[17] The Second Convict Nelson Vivian George Domingue

Count 1- sentenced to Life imprisonment

Count 2- sentenced to Life Imprisonment

[19] The terms of imprisonment in the two counts to run concurrently.

Signed, dated and delivered at Ile du Port on 5 March 2018



M Twomey
Chief Justice of the Supreme Court



Dr. Mathilda Twomey
Chief Justice
Supreme Court of Seychelles

