

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 137
CO72/2017

In the matter between

THE REPUBLIC

(rep. by Brigitte Confait)

Plaintiff/Petitioner

and

OSAMA CASIME

(rep. by Nichol Gabriel)

1st Accused

HIFA CASIME

(rep. by Nichol Gabriel)

2nd Accused

Neutral Citation: Republic v *Casime* (CS 72/2017) [2019] SCSC 137 (22 February 2019)

Before: Govinden J

Summary: Plea of guilty convicts sentenced in pursuant to the provision of Section 15, 5, 15(1) of the Misuse of Drugs Act 2016

Heard: 19 July 2018

Delivered: 22 February 2019

SENTENCE

GOVINDEN J

[1] In this case the two convicts were charged as follows on the 2nd December 2017.

Count 1

Statement of offence

Conspiracy to commit the offence of importation of a control drug contrary to Section 16 read with Section 5 of the Misuse of Drugs Act 2016 and punishable under the second schedule of the said Act.

Particulars of offence

Osama Brandon Casime and Hifa Norah Casime both of Perseverance Mahe between the 29th of November 2017 and the 7th of December 2017 agreed with one another to pursue a course of conduct that if pursued will necessary involved the commission of an offence by them under the Misuse of Drugs Act. Namely the offence of importation of a controlled drug namely heroin (diamorphine) having a net total wet of 141.2 grams containing 69.19 grams of pure heroin (diamorphine).

Count 2

Importation of a controlled drug contrary to Section 5 of the Misuse of Drug Act 2016 and punishable under the second schedule of the said Act.

Particulars of offence

Osama Brandon Casime of Perseverance Mahe between the 29th of November 2017 and 7th of December 2017 at the Seychelles Post Office Victoria Mahe imported into Seychelles a controlled drug namely heroin (diamorphine) having a net total weight of 114.2 grams containing 69.19 grams of pure heroin (diamorphine).

Count 3

Statement of Offence aiding and abetting the importation of a controlled drug contrary to Section 15(1) read with Section 5 of the Miuse of Drugs Act 2016 and punishable under second schedule of the said Act.

Particulars of Offence

Hifa Norah Casime of Perseverance Mahe, between the 29th of November 2017 and the 7th of December 2017 at Victoria Mahe aided and abetted Osama Brandon Casime of Perseverance Mahe to import into Seychelles a controlled drug namely heroin (diamorphine) having a net total weight of 141.2 grams containing 69.19 grams of pure heroin (diamorphine) by procuring a person known to the Republic namely one Vanita Georges to have the said controlled drug imported in her name hidden inside a notebook.

- [2] In the indictment the 1st and 2nd convicts were charged jointly as co-conspirators in Count 1. Count 2 charged the 1st convict for the offence of importation of the said controlled drug. Whilst Count 3 charged the 2nd convict of aiding and abetting the importation of the said controlled drug.
- [3] Under the second schedule of the Misuse of Drug Act 2016 all offences charged in this case carries with them the maximum penalty of life imprisonment and Seychelles rupees one million as a fine.
- [4] The two convicts originally pleaded not guilty to those charges levelled against them. The matter then proceeded to trial with the Prosecution leading its case.
- [5] During the middle of the Prosecution case the convicts decided to change their pleas from one of not guilty to guilty. The two convicts were each asked by the Court whether they had sought legal advice about the consequences of such a change of pleas and whether they know of the consequences of such a change and they replied in the affirmative.
- [6] Mr Gabriel Learned Counsel for the defence confirmed that he has on numerous occasions informed the two convicts of the legal and factual effects of such a change of pleas.
- [7] The charges were put to the convicts anew and they both pleaded guilty to the said charges.
- [8] The facts of the case as recited by the Prosecution were accepted by both of them except with a minor amendment made by the 2nd convict regarding the place of her arrest. Thereafter, they were found guilty and convicted on their own guilty pleas.
- [9] In respect of the sentence, the Learned Defence Counsel, requested for the provision of a Probation Services Report in order to assist him in a plea in mitigation in favour of his clients.
- [10] The Probation Report was made available by the Probation Services to the Court and the parties on the 1st of February 2019.

- [11] The mitigation behalf of the 1st convict was made by Learned Counsel. He made extensive reference to the content of the Probation Report. He submitted that the Report made a recommendation for custodial sentence taking into consideration the fact that the 1st convict has children and that he needs to undergo a drug reform programme.
- [12] The Learned Defence Counsel in referring to the two counts in which his 1st client is charged submitted that both charges relates to only 141.2 grams of heroin containing 16.19 grams of pure heroin. The Learned Counsel submitted in that regards that there are numerous decisions of this Court in which convicts which had imported far greater amounts of controlled drugs had gotten only up to 15 years of custodial imprisonment. He quoted the case of Rep versus Liza Chilaule CR26/2018 in which the convict was sentenced for 15 years for importing at about 3 kilos of controlled drugs. The Learned Counsel also quoted and cited the case of R versus the Eric Dijoux decided in 2018 by Learned Chief Justice in which a Malagasy national who pleaded guilty of importation of more than 1 kilo of heroin was sentenced to only eight years of imprisonment.
- [13] Mr Gabriel also mitigated on the personal circumstances of the 1st convict. He submitted that he is a young offender and that he is remorseful and that he has a lot to contribute to society. It is his submission that Osama is a drug dependant person and that a long term custodial sentence will only render him into a hardened criminal.
- [14] It is his further submission that a drug rehabilitation programme under Section 39 of the Misuse of Drugs Act 2016 will be in his best interest.
- [15] As far as the 2nd convict is concerned the Learned Counsel submitted that she is a young mother with one child and that she had been in employment in the tourism sector. Learned Counsel also refer to the fact that the Probation Services had recommended a community based sentence in her regards. The Learned Counsel also submitted that this Court should make a finding that both convicts were convicted and sentenced to non aggravated charges so that they would benefit remissions under the Prison's Act.
- [16] After carefully scrutinising the submissions in mitigation made on behalf of both convicted persons. And after considering the severity of the charges both in terms of the

particulars of the charge, the facts of the case, and the sentences provided for in law. And having borne in mind the content of the Probation Services Report the Court will decide as follows:

1. That under Section 47(a) of the Misuse of Drugs Act 2016 in sentencing a convicted person under part two of the Act whether upon a guilty plea or following trial the Court must have regards to the objectives of the Act, the degree of control to which the relevant controlled drug is subject and the general objects of transparency and proportionality in sentencing.
2. That under Section 47(2) where an aggravating or mitigating factor is identified under Section 48 and 49 of the Act the Court must expressly refer to and address that fact and give due weight to it in considering the appropriate sentence.
3. That under Section 47(3) of the Misuse of Drugs Act in sentencing a person convicted of an offence under the said Act in circumstances where the offence is aggravated in nature, the Court shall have due regard to the indicative minimum sentence for the aggravated offence of that kind.

[17] I consider that this case is one of an aggravated nature as it has aggravated circumstances. The offences were committed by an organised criminal group consisting of three persons. This being the two convicted person and one Vanita Georges. The latter being an accomplice turned State witness. The modus operandi has a certain level of sophistication and organisation with the drug being imported through the official postal system of this country. I therefore treated it as aggravated offence and it shall be considered as such against the two convicted person. A further aggravation this time with regards to the 1st accused person is the fact that he has a prior conviction for the offence of possession of a controlled drug in which he was convicted before this Court in a trial on the 16th of May 2016 and his sentence is not spend under the Rehabilitation of Offenders Act.

- [18] On the other hand there are some mitigating factors in this case under Section 49 of the Act. Both convicts have admitted the truth of the charges through guilty pleas, albeit that the pleas were not made early during the course of the proceedings.
- [19] I now then have to balance the mitigating circumstances together with the aggravated circumstances in this case. Having done so I do not think that the indicative minimum sentence would serve justice in this matter.
- [20] I will accordingly sentence the 1st convict, Mr Osama Casime, to 10 years imprisonment under Count 1 and the 2nd convict Miss Hifa Casime 5 years of imprisonment under count 1.
- [21] I will sentence the 1st convict, Mr Osama Casime, to 10 years of imprisonment under Count 2.
- [22] I will sentence the 2nd convict, Miss Hifa Casime, to 5 years of imprisonment under Count 3.
- [23] All custodial sentences are to run concurrently with one another.
- [24] The period spend on remand by the two convicts shall be deducted from their sentences.
- [25] I consider that the offences convicted and sentence in this are aggravated in nature for the purpose of Section 30(2)(b) of the Prison's Act.
- [26] Both convicted persons has a right to appeal to the Court of Appeal within 30 days from the date of this judgment.

Signed, dated and delivered at Ile du Port 22 February 2019

Govinden J