

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 488
Cr.S. No 28/2018

In the matter between

THE REPUBLIC
(rep. by *Hernanth Kumar*)

and

HARRY DUPRES
(rep. by *Joel Camille*)

Neutral Citation: *R v Dupres* Cr.S 28/2018) [2018] SCSC (17 June 2019).

Before: Twomey CJ

Summary: Conspiracy to import a controlled drug – unstated amount of heroin - conviction – mitigation and aggravation – sentence of ten years

Heard: 27 May 2019

Delivered: 17 June 2019

ORDER

The accused is sentenced to ten years imprisonment.

SENTENCE

TWOMEY CJ

[1] The convict, Harry Moise Dupres of Majoie, has been found guilty of conspiracy to import a controlled drug, namely heroin contrary to section 16 (a) read with section 5 of The Misuse of Drugs Act 2016 and punishable to the penalty specified in the Second Schedule to the said Act (hereinafter MODA).

[2] I have directed my attention first of all to section 16 (a) of MODA which provides:

“A person who agrees with another person or persons that a course of conduct shall be pursued which, if pursued –

(a) will necessarily amount to or involve the commission of an offence under this Act by one or more of the parties to the agreement;

(b) would necessarily amount to or involve the commission of an offence under this Act by one or more of the parties to the agreement but for the existence of facts which renders the commission of the offence impossible, is guilty of the offence and liable to the punishment provided for the offence”(Emphasis added).

- [3] The punishment for importation of controlled drugs specified in the Second Schedule to the Act is a maximum sentence of life imprisonment.
- [4] Although the amount of the drugs is not specified in this case, the convict was charged with two other persons namely Eric Dijoux, a Malagasy national on whom the drugs was found at Seychelles International Airport and Roy Bailey and who accepted a conditional offer from the Attorney General and turned state witness in return for the charges against him being dropped. Eric Dijoux had in his possession 930 grams of a drug substance, which contained 555.83 grams of pure heroin (diamorphine).
- [5] The recommended sentence for this type of offence for a quantity of drugs between 400 grams to 600 grams is fifteen years to twenty years imprisonment. Eric Dijoux pleaded guilty to the importation of the said drug and was sentenced to eight years imprisonment based on mitigating factors.
- [6] I also have at this juncture drawn my attention to section 47 of MODA which provides in relevant part:

“(1) in sentencing a person convicted of an offence under part of this Act, whether upon a guilty plea or following trial, the Court shall have regard to

(a) the objectives of the Act

(b) the degree of control to which the relevant controlled drug is subject; and

(c) the general objectives of transparency and proportionality in sentencing.

(2) Where an aggravating or mitigating factor identified in section 48 or section 39 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence...

(4) In sentencing a person convicted of an offence under Section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all the circumstances."

(5) In sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the Court shall have due regard to the indicative minimum sentence for aggravated offences of that kind."

- [7] Section 48 of MODA also provides that aggravating factors include the presence of a commercial element in the offending particularly where the drugs have been imported into Seychelles and the involvement of an organised criminal group to which the offender belongs which are clearly applicable to this case and which I have to bear in mind when sentencing.
- [8] I have also considered the submissions made by Counsel concerning the mitigation of the sentence to be passed on him. The mitigating factors are also set out in a probation report prepared for the purpose of sentencing by this court and I have taken note of them all.
- [9] The convict is fifty-two years old, and is self-employed, living and working in Madagascar. He has a Malagasy wife with whom he has two children, aged 13 and 17 years of age. He is the family's sole breadwinner. He is also a first offender.
- [10] In balancing the aggravating and mitigating factors in respect of the convict's sentence I have to state that I observe that the accused has shown no remorse. Seychelles continues to be plagued by the influx of heroin poisoning its youth and wreaking havoc on the community. The State is put to great expense prosecuting these cases and repairing the damage to the health of its citizens caused by the ingestion of these drugs.
- [11] While the Court has to show a degree of mercy in sentencing it also has to provide a deterrence for these crimes. In the circumstances, I sentence the convict to a term of a term of 10 years imprisonment. Time spent on remand is to be taken into account.
- [12] The convict has a right of appeal against the conviction and sentence in this case.

Signed, dated and delivered at Ile du Port on 6 June 2019.



Twomey CJ



Dr. Mathilda Twomey
Chief Justice
Supreme Court of Seychelles