

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2019] SCSC 605

CO 27/2017

In the matter between

**THE REPUBLIC**

*(rep. by Hemanth Kumar)*

**Republic**

and

**MARY GEERS**

*(rep. by Anthony Derjacques)*

**1<sup>st</sup> Convict**

**ALBERTUS GEERS**

*(rep. by Anthony Derjacques)*

**2<sup>nd</sup> Convict**

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**Neutral Citation:** *Republic v Geers & Or* (CO 27/2017) [2019] SCSC 605

**Before:** Govinden J

**Heard:** 18<sup>th</sup> July 2019

**Delivered:** 18<sup>th</sup> July 2019

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**SENTENCE**

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**GOVINDEN J**

[1] The 2<sup>nd</sup> and 3<sup>rd</sup> Accuseds in this case stood charge as follows;

Count 3

Statement of offence

Obstructing the NDEA Agent contrary to section 16 (6) (c) of the National Drugs Enforcement Agency Act, 2008 and punishable under Section 17 (3) of the said Act.

Particular of offence

Mary Geers of Bel Ombre, Mahe, on the 30<sup>th</sup> of May 2017 at her residence in Bel Ombre, Mahe, obstructed the NDEA Agents during the performance of their duties.

Count 4

Statement of offence

Obstructing the NDEA Agents contrary to section 16 (6) (c) of the National Drugs Enforcement Agency Act, 2008 and Punishable under section 17 (3) of the same Act.

Particulars of offence

Albertus Geers of Bel Ombre, Mahe, on the 30<sup>th</sup> of May 2017 at his residence in Bel Ombre, Mahe, obstructed the NDEA Agents during the performance of their duties.

- [2] The two accused persons have pleaded guilty to the two counts and this Court has convicted them on their own guilty pleas. The 1<sup>st</sup> Accused person who stand charge in Count 1 and 2 of the Indictment has maintain his not guilty plea, and his trial has been fixed for the 19<sup>th</sup>, 20<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> of September 2019.
- [3] The facts of the case upon which the convicts has pleaded guilty, has been admitted by the convicted persons.
- [4] They have been recited by the Assistant Principle State Counsel Mr Kumar to be as follows;
- [5] That on the 30<sup>th</sup> of May 2017 at around 8 pm in the evening NDEA Agents arrived at “bamboo house” residence at Bel Ombre, in order to carry out a search. They entered into the premises and knocked on the main door of the house and shouted that it was the NDEA and asked the occupants of the house to allow them access inside. At that time the NDEA Agents could see the 1<sup>st</sup> accused, Mr Alexander Geers and the 1<sup>st</sup> convict Mrs Mary Geers through a glass window. The 1<sup>st</sup> convict who had seen the NDEA Agents

refused to open the door, and she informed the agents that she was going to call her lawyer and that they might as well break down the door if they wanted. After several other requests to open the door and refusal on the part of the 1<sup>st</sup> convict, the NDEA Agents broke open the door and proceeded inside the house. Inside they located the 1<sup>st</sup> accused and the 1<sup>st</sup> convict, according to the Prosecution this was the basis on which they laid the charge against the 1<sup>st</sup> convict under section 16 (6) (c) of the NDEA Act.

[6] As far as the 2<sup>nd</sup> convict is concern, the Prosecution recited the following facts as a basis of their charge; that half an hour later at around 8:30 pm the 2<sup>nd</sup> convict arrived at the scene at the Bamboo river house. When he saw the presence of the NDEA in the house, he shouted and started to confront Agent Jimmy Louis, this happened even though this agent identified himself to the convict. The 2<sup>nd</sup> convict then started to us abusive language towards the agent. According to the Prosecution when the 2<sup>nd</sup> convict was doing this it appeared that he was under the influence of alcohol.

[7] As far as previous convictions are concerned, the Prosecution informed the Court that nothing was known regarding the two convicts, this Court will therefore take it that they are first time offenders.

[8] Learned Counsel for the defence, Mr Derjacques, mitigated heavily in favour of a lenient sentence. His main trust of his submission in mitigation was that the personal circumstances of the two convicts and the pattern of sentencing in this jurisdiction regarding similar offences as charged in this case, call for none custodial sentence to be imposed.

[9] In his submission the convicts has been very traumatised as it is the first time that they have found themselves facing criminal proceedings in this country, according to the Counsel they have been coming to the Court for over 2 years and this has impacted their lives. He submitted that the convicts are first time offenders and that they have pleaded guilty and have save the precious time of the Court, the Prosecution, and the witnesses of the Prosecution. It is the further submission of Counsel, that the convicts are very sorry for what they have done and that their emotional distress would have been apparent to the Court when they pleaded. As far as the 2<sup>nd</sup> convict is concerned, learned Counsel for the

defence specifically submitted that he had been the Honorary Counsel of the Kingdom of Netherlands to Seychelles, and that he had voluntarily resigned from this position after he had been charged in this case. It is the Counsel submission that the two convicts are employing hundreds of Seychellois and that they their business tax contribution are substantially contributing to society. Counsel submitted that the position of the convicts in life should not interfere with their sentences. Finally, Mr Derjacques referred to the Court to a number of sentences rendered by the Supreme Court under section 16 (6) (c) of the NDEA Act, wherein the Court had imposed none custodial sentences on convicted persons, on this basis it is his submission that the pattern of sentencing is one of none custodial sentences.

[10] I have thoroughly considered the charges filed in this case in terms of their statement and particulars of offence, in the light of the facts of the case and the plea mitigation made by the learned Counsel for the defence, I find that;

- i. The offence charged in this case contrary to section 16 (6) (c) of the National Drugs Enforcement Agency Act 2008, carries with it a maximum penalty of 5 years imprisonment.
- ii. The convicts have not been charged under the provision of the Misuse of Drugs Act 2016, and hence, the issue of an aggravated offences and minimum mandatory sentence does not arise in this case.
- iii. The offence charge under count 3 and count 4 are only for obstructing of NDEA officers and not one of threatening NDEA officers with violence. And that on the facts no actual physical harm was sustained by the agents as a result of the obstruction.
- iv. The convicts have pleaded guilty and have save the precious time of the Court, the Prosecution and witnesses for the Republic and in doing so the convicts have also shown remorse for the commission of the offences.

- v. The pattern of Sentencing when it comes to accused who has pleaded guilty to offences under section 16 (6) (c) of the NDEA Act, has been one of none custodial Sentences.

[11] According to me these factors amounts to strong mitigating circumstances that weighs heavily in favour of the two convicts. Therefore, for committing the offence charged in Count 3 I will sentence the 1<sup>st</sup> convict, Mrs Mary Geers, to pay a fine of SCR 50,000/-, the fine has to be paid within 14 days from the date of this sentence, in default of payment of the fine, the convict will have to serve a sentence of one year imprisonment. For committing the offence charge in Count 4 I will sentence the 2<sup>nd</sup> convict, Mr Albertus Geers, to pay a fine of SCR 50,000/-, the fine has to be paid within 14 days from the date of this sentence, in default of payment of the fine the 2<sup>nd</sup> convict will have to serve a sentence of 1 year imprisonment.

[12] The two convicts have one month to appeal against this sentence.

[13] All bail conditions prior to impose by this Court shall, accordingly, lapse.

Signed, dated and delivered at Ile du Port on 18<sup>th</sup> July 2019

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Govinden J