

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 1018
CO no. 25/19

In the matter between

THE REPUBLIC
(rep. by Langsinglu Rongmei)

and

NILZA JULIO TEMBE
(rep. by Edith Wong)

Neutral Citation: *R v Tembe* Cr. S 251/2019) [2019] SCSC 1018 (19 November 2019).

Before: Twomey CJ

Summary: trafficking in a controlled drug namely 5307.7 grams of cannabis by transporting the same

Heard: 19 November 2019

Delivered: 19 November 2019

ORDER

The Accused is sentenced to a term of five years imprisonment. Time spent on remand is to be taken into account.

SENTENCE

TWOMEY CJ

[1] The convict, Nilzo Julia Tembe, has on her own plea been found guilty of trafficking in a controlled drug, namely 5307.7 grams of cannabis by means of transporting the same, contrary to section 7 (1) read with section 2 punishable under section 7 (1) as read with

sections 7(4) and 48(1) (a) and with the Second Schedule of the Misuse of Drugs Act 2016.

- [2] The facts are that the convict arrived into Seychelles in April 2019 from Johannesburg. She had a black bag in her possession which when screened revealed an unknown item. On inspection, a fake compartment was discovered in the bag. It was cut open and inside the compartment six packages were found and seized. The convict also had in her possession a Samsung mobile phone and USD550. On analysis, the packages were found to contain cannabis with a weight of 307.7 grams. The convict was charged with importation of drugs but the charge was subsequently amended to a charge of trafficking by means of transportation.
- [3] The punishment for trafficking in controlled drugs as specified in the Second Schedule to the Act is a maximum sentence of life imprisonment and a minimum indicative sentence of 15 years.
- [4] The amount of the drugs trafficked in this case was 5307.7 grams of cannabis.
- [5] The recommended sentence for this type of offence for a quantity of Class B drugs of more than 1, 500 grams is between 3 years and 15 years for a first offender. It must be noted that trafficking in over 1500 grams of cannabis is an aggravated offence even for a first offender.
- [6] I also have at this juncture drawn my attention therefore to section 47 of MODA which provides in relevant part:

“(1) in sentencing a person convicted of an offence under Part II 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...

- [7] I requested and was provided with a probation officer's report for the convict. She is as I have stated a first offender. She is a thirty-eight year old Mozambique national and has two children aged 18 years and 10 years who are attending school in Maputo and are being taken care of by her mother. She claims that she had a difficult life in Maputo and strives hard to provide for her children. She does not explain how and why she became involved in the offence but states that she cooperated with the police when she was arrested. She was transporting the drug but was not a user herself.
- [8] She is begging for clemency and leniency and states that she finds it hard to adapt to life in prison in Seychelles and prays to be transferred to Mozambique to be close to her family.
- [9] I have also considered the submissions made by learned Counsel concerning the mitigation of the sentence to be passed on the convict. She submits that the convict is the victim of economic circumstances.
- [10] I note that the convict has expressed remorse for the offence she has committed.
- [11] In balancing the mitigating factors in respect of her sentence and the havoc the trafficking of drugs causes in Seychelles I have to find an appropriate sentence for this particular individual bearing in mind all the particular circumstances of her case.
- [12] On the other hand, trafficking of drugs always involves a commercial element. I take into account the plight of drug addicts and their families in Seychelles and the impact of more drugs being transported into Seychelles.
- [13] Hence, whilst exercising clemency I must also deter others from embarking on this futile exercise. In the circumstances, I sentence the convict to a term of a term of 5 years imprisonment. Time spent on remand is to be taken into account.
- [14] The convict has a right of appeal against the conviction and sentence in this case.

[15] The prison authorities are also asked to consider the possibility of repatriating the convict to a Mozambique prison.

Signed, dated and delivered at Ile du Port on 19 November 2019.

Twomey CJ