

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC
CO14/2018

In the matter between:

THE REPUBLIC
(rep. by Hemanth Kumar)

Republic

and

LINDA MARIE
(rep. by Nichol Gabriel)

1st Convict

DAVID CECILE
(rep. by Clifford Andre)

2nd Convict

ELIZABETH TELMA CECILE
(rep. by Clifford Andre)

3rd Convict

Before: Burhan J
Heard: 17 January 2020
Delivered: 31 January 2020

SENTENCE

BURHAN J

[1] The aforementioned 1st 2nd and 3rd convicts in this case have been convicted on Count 1 which reads as follows:

Conspiracy to commit the offence of Importation of a controlled 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.

[2] The 1st convict Linda Marie has also been convicted on Count 2 for the following offence:

Importation of a controlled drug contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule of the said Act.

[3] The 3rd convict has also been convicted on Count 3 which reads as follows:

Importation of a controlled drug contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule of the Misuse of Drugs Act 2016.

[4] The controlled drug referred to in Counts 1, 2 and 3 is a Class A controlled drug Heroin weighing 201.1 grams containing 126.5 grams of pure Heroin (Diamorphine) as borne out by the particulars of the offences.

[5] At the request of learned Counsel for the convicts, a probation report was called and thereafter learned Counsel Mr. Gabriel made a plea of mitigation on behalf of the 1st convict while learned Counsel Mr. Andre made a plea in mitigation on behalf of the 2nd and 3rd convicts.

[6] I have considered the facts contained in the probation report of each of the convicts and the plea in mitigation made by both learned Counsel.

[7] According to the report, the 1st convict Linda Marie is 49 years of age. She has three children. She has worked as a cook, carer and at the time of the incident was working as a general helper at St Elizabeth Convent. It is apparent from her evidence and the report that her desperate need to pay the arrears of house rent had made her agree to be a carrier of the controlled drug, in the importation of the controlled drug into Seychelles. She is a first offender who at the last minute during the trial, decided to come clean and give evidence and admit her fault and tell the truth to Court. Her evidence under oath was useful for the prosecution case against the other convicts.

[8] Having considered the aforementioned facts, I am of the view that the 1st convict has expressed remorse and regret at what she had done and co-operated with the prosecution which is a strong factor in mitigation. However considering the serious nature of the charge and the fact that the controlled drug is a Class A drug and the pure quantity

involved in the importation, I am of the view that a custodial term of imprisonment should be imposed. Considering all the aforementioned facts in mitigation, **I proceed to sentence the 1st convict Linda Marie, to a term of 4 years imprisonment on each of the Counts 1 and 2 and proceed to make further order that the sentences run concurrently.**

[9] According to the probation report, the 2nd convict David Cecile is 35 years of age. He has two children aged 15 and 9 years. He has worked as a casual labourer and a general helper at the Super Save supermarket. He has also worked as a casual labourer with the Land Marine and at the time of the incident worked as an unlicensed taxi driver. He too is a first offender. He has not expressed remorse and regret but still maintains his innocence. It is apparent he is the brother of the 3rd convict and I find his defence as stated to the probation officer that he just went for a hire and was unaware it was an unlawful drug operation unbelievable, considering the fact his own sister the 3rd convict was the master mind and sponsor of the said controlled drug importation. However, I note his part played in the conspiracy to import the said controlled drug, is limited to transporting the conspirators to the airport and back and going to collect the parcel in the very early hours of morning. The evidence does not reveal he was the mastermind behind the illegal operation of importation of a controlled drug. Having considered all these facts despite him not expressing remorse and regret at what he had done, **I proceed to sentence the 2nd convict David Cecile, to a term of five years imprisonment on Count 1.**

[10] According to the report of the 3rd convict Elizabeth Cecile is 43 years of age. She has one child. She had worked at the Indian Ocean Tuna as a general helper for 10 years and was a general helper at Pirate Arms. At the time of her arrest, she had her own retail business which she had been running for the past 10 years. She too denied the charge or her involvement in the importation of the controlled drug on the basis it was not found on her. In mitigation learned Counsel moved that she be treated leniently as the controlled drug was not found on her and she was a first offender. He has also referred to the fact that there are no aggravating circumstances as the quantity of controlled drug is below 250 grams.

[11] It is clear from the evidence however that the 3rd convict Elizabeth Thelma Cecile was the mastermind of the said operation and the one who had paid for the ticket and accommodation of the 1st convict Linda Marie who had agreed to carry the controlled drug on her into the Seychelles. She had also arranged for the drug to be collected by her brother the 2nd convict when the 1st convict arrived in the Seychelles. It is clear that she would have benefitted greatly had the importation succeeded, having taken no risks at all herself. The probation report recommends deterrent punishment. **I proceed to sentence the 3rd convict Elizabeth Thelma Cecile, to a term of nine years imprisonment on each of the Counts 1 and 3 and make order that the terms run concurrently.**

[12] Time spent in remand to count towards sentence. All three convicts are entitled to remission at the discretion of the Superintendent of Prisons.

[13] Copy of this order to be served on Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 31 January 2020.

M Burhan J