

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 183
CO 63/2019

In the matter between

THE REPUBLIC
(rep. by Joshua Revera)

and

BRIAN CHRISTOPHER VITAL
(rep. by France Bonté)

Accused

Neutral Citation: *R v Vital* CO 63/19 [2020] SCSC 183 10 March 2020
Before: Twomey CJ
Summary: Possession of heroin amounting to 8.69 grams of heroin with rebuttable presumption of having the same with intent to traffic- plea of guilty-sentence
Heard: 3 February 2020
Delivered: 10 March 2020

ORDER

The convict is sentenced to two years' imprisonment suspended for three years.

SENTENCE

TWOMEY CJ

[1] The convict, Brian Christopher Vital has pleaded guilty to the charge of being in possession of heroin of a total net weight of 14.25 grams with a purity of 61% amounting to 8.69 grams of heroin giving rise to a rebuttable presumption of having been in possession of the same with intent to traffic contrary to section 9 (1) read with section 19 (1) of The Misuse of Drugs Act 2016 and punishable under section 7 (1) specified in the Second Schedule to the said Act (hereinafter MODA).

- [2] The heroin was found at the convict's home, with the amount giving rise to a rebuttable presumption of having been in his possession with intent to traffic. He pleaded guilty to the charge with the reservation that the heroin was for his own consumption.
- [3] I have considered the submissions made by both learned Counsel and especially the mitigation of sentence in respect of the convict. I also take into consideration the contents of a probation report prepared by the Probation Officer in order to assist the court in its sentencing duties.
- [4] The convict is thirty-five years old, and a first time offender. He lives with his girlfriend with whom he has two young children, aged five and two. He is currently working as a casual worker with Hunt Deltel Ltd. In the report, he claims that the drug was in his home for safekeeping and as payment he would get access to it for his personal use.
- [5] In mitigation, learned counsel for the convict, Mr. Bonté, stated that the convict was a drug addict and on a methadone programme. When questioned by the court, the convict stated that he had relapsed but had returned on the programme ten days before his court appearance. Nonetheless, he was remorseful.
- [6] I am guided by the agreed guidelines for such offenders issued in 2016. I also have at this juncture drawn my attention to section 47 of MODA which provides in relevant part:
- “47 (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.”*
- [7] In this respect, I take into consideration the mitigation speech by learned counsel on behalf of the convict. I also note that the convict is a first offender. Further, at the very outset of the case, he has pleaded guilty, thereby expressing remorse and regret and has not wasted the court's precious time. He expects the mercy and leniency of the Court.
- [8] Moreover, in the present case I note that none of the aggravating factors as set out in section 48 of MODA are present, while there are in fact several of the mitigating factors

as set out in section 49 of MODA. The agreed recommended sentence is from two to five years for a quantity of 2 to 10 grams of Class A drugs.

[9] In the circumstances and for the purpose of deterrence of similar offences by the convict, I sentence him to a term of a term of two years' imprisonment suspended for three years.

[10] The convict should not commit any offences under the provision of the Misuse of Drugs Act 2016 during the currency of the suspended sentence or will otherwise trigger the two-year sentence of imprisonment.

[11] The convict may appeal the conviction and sentence within one month hereof.

Signed, dated and delivered at Ile du Port on 10 March 2020

Twomey CJ