

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 246
CO 44/2017

In the matter between

THE REPUBLIC
(*rep. by G Thatchett*)

and

1. **STEPHAN MONDON**
(*rep. by A Amesbury and C Andre*)
2. **GUY HALL**
(*rep. by G Camille*)
3. **PHILIP MARZORCCHI**
4. **MARCUS LOUYS**
(*rep. by C Andre*)

Neutral Citation: *R v Mondon and Ors* (CO 44/2017) [2020] SCSC 246 (3 April 2020)

Before: Govinden J

Summary: Misuse of Drugs Act 2016 – guilty plea - mitigating factors - departure from both the minimum and maximum sentences

Heard: 10 March 2020

Delivered: 3 April 2020

ORDER

The convicted persons are sentenced as follows:

1. The first convict is sentenced to eight (8) years imprisonment under count one.
2. The second convict is sentenced to six (6) years imprisonment under count two.
3. The third convict is sentenced five (5) years imprisonment under count three.
4. The fourth convict is sentenced to five (5) years imprisonment under count four.

Time spent on remand to be taken into consideration in the sentences for all accused

SENTENCE

GOVINDEN J

[1] The four convicts in this case were convicted on their own guilty plea to the charges levelled against them by the Prosecution in amended information containing four counts dated 18th of February 2020.

[2] The first convict, Mr Stephan Mondon, pleaded guilty to the first count, namely the charge of importation of a controlled drug in contravention of the Misuse of Drugs Act, 2016 (MODA), contrary to and punishable under section 5 read with section 48 (1) (a) and the second schedule of MODA. The charge is particularised as follows:

Stephan Mondon, 29 years old male, unemployed and residing at Anse Forbans, Mahe, along with other persons known to the Republic on or around 13th of August 2017, imported into Seychelles 33855.3 grams of the controlled drug namely, cannabis resin in contravention of the Misuse of Drugs Act 2016, on board the yacht "Quest" and in two vessels belonging to Stephan Martial Mondon.

[3] The second convict, Mr Guy Pierre Hall, pleaded guilty to the second count, namely the charge of aiding and abetting trafficking in a controlled drug contrary to, and punishable under section 7 (1) read with section 15 (1) (1) (a) and section 48 (1) (b) and the second schedule of MODA. The charge is particularised as follows:

Gary Pierre Hall, 50-year-old male, Accountant at Creole Travel Services of Beau Vallon, Mahe on or around 13th of August 2017, aided and abetted persons known to the Republic to traffic in 33855.3 grams of the controlled drug namely cannabis resin in contravention of the Misuse of Drugs Act, on board vessels belonging to one Stephen Martial Mondon.

[4] The third convict, Mr Philip Arthur Joseph Marzocchi pleaded guilty to the 3rd count, namely the charge of trafficking in a controlled drug, by contrary to section 7 (1) of the MODA read with section 2, section 20 (3) and section 23 of the said Act and punishable under section (1) of MODA read with section 48(1) (b) and the second schedule of the Act. The charge is particularised as follows:

Philip Arthur Joseph Marzocchi, 66-year-old skipper/captain, residing at Providence, Mahe along with other persons known to the Republic on or around 13th August 2017, was trafficking in a controlled drug by means of transporting, delivering or distributing a

controlled drug namely, 33855.3 grams of cannabis resin in contravention of the Misuse of Drugs Act 2016 on board of two vessels belonging to one Stephan Martial Mondon.

- [5] The fourth convict, Mr Marcus Louys, pleaded guilty to the 4th count, namely the charge of aiding and abetting trafficking in a controlled drug contrary to, and punishable under section 7 (1) read with section 15 (1) (a) and the second schedule of MODA. The charge is particularised as follows:

Marcus Louys, 30-year-old male, casual worker, residing at Glacis, Mahe, on or around the 13th August 2017, aided and abetted persons known to the Republic to traffic in 33855.3 grams of a controlled drug, namely cannabis resin in contravention of the Misuse of Drugs Act 2016.

- [6] The salient facts of the case were available to the court as the trial of the convicts was well underway when they changed their pleas from not guilty to guilty. According to evidence before the court the first and fourth convicts were arrested on 16th August 2017. The third convict was arrested on 18th August 2017 and the second convict was arrested on 23rd August 2017. They have all been on remand from 7th September, 2017 onwards. The prosecution had examined 13 witnesses and produced 29 exhibits, which consisted of 36 packets of the controlled drug. Exhibits D 1 to D 11(a) were marked on behalf of the defence. As per the evidence of PW – 9, Julia Volcere, Forensic Analyst and Exhibits P 15 & P 19 – the Certificates of Analysis, the 36 packets contained controlled drug, namely, cannabis resin, totalling 33855.3 grams in weight. PW -10, Peter Michael Hein, a South African skipper of a yacht named “*Quest*”, in which the drugs were imported into Seychelles identified the second convict in June 2017 in Zanzibar, when money for the advance purchase of the drugs was handed over to him through the second convict and also later in July 2017 at a restaurant in Zanzibar. Exhibit P 22, a letter from Kenya Airways and an immigration document (P 23) shows that the second convict travelled to Tanzania in June and July 2017. P 27 a Cash Plus Money Exchange receipt shows that the second convict changed SCR 55,600 to USD 4000 on 15th April 2017.

- [7] The other two material prosecution witnesses, PW - 12 & PW – 13 Jude Beauchamp & Jude Labiche - narrated the involvement of the first convict; the third convict and the fourth

convict in the commission of the offences. The witnesses testified how the first convict procured them for the illegal transaction and the third convict navigated a vessel belonging to the first convict and collected the bag containing the drugs at the African Bank from the incoming yacht skippered by Peter Micheal Hein. He also testified on the role of the fourth convict in collecting the drugs at Anse Royale Bay and bringing the drugs to shore. The witnesses also identified the drugs and the bag in which drugs came in (P 13(a)); the photographs of the vessels involved and the first and third convict.

- [8] The convicts, moreover, have admitted the summary of the facts of the case as read out by the Learned counsel for Republic. According to counsel for the Republic, nothing is known about the previous convictions of the convicts. Hence for the purpose of this sentence the court will take them as first offenders.
- [9] The Learned counsel for the convicts invited the court to request a probation pre-sentencing report for each of the convicts for the purpose of assisting them in their plea in mitigation of their sentences. The Probation Reports were requested and were made available to the court and all convicts
- [10] I have thoroughly considered the seriousness of the charges in this case in terms of the severity of the counts and the facts of the case. I have further given due consideration to the strong submissions in mitigation made by the Learned Defence counsels in favour of a lenient sentence and the content and recommendations of the Probation services in the respective reports. Having done so I have come to the following determination.
- [11] I find that this case is a serious one. The charges pleaded to by the convicts relates to 33855.3 grams of a class B drug. If the drug was not intercepted it would have ended on the streets of Seychelles. There it would have gone a long way in accentuating the scourges of drugs and all the ills that it entails.
- [12] There is also abundant evidence on record that the several offences were jointly connected and executed in an organised manner. It was an organised crime that transcends national jurisdictions and nationalities and involved a complicated number of transactions, including international air and sea voyages. The modus operandi of the offences was well

coordinated, using different ocean going vessels; and moving the drugs from Zanzibar to Seychelles. The facts show that there was direct involvement, albeit in different degrees of participation, of all of the convicts, with all of them being aware of the illicit nature of the substance. These activities would have necessitated plenty of preparation and strategic planning. The first convict provided funding for the operation and the usage of two of his boats. The second convict financed partly the purchase and importation. The third convict skippered one of the first convict's vessel and collected the drug at sea and brought it to Anse Royale bay, Mahe. The fourth convict assisted the first convict to transfer the drugs from Anse Royale bay onto the island Mahe.

- [13] The gravity of the case is also reflected by the maximum penalties for each charge. The maximum penalty for the first count is life imprisonment and a fine of one million Seychelles Rupees and the indicative minimum sentence for such an aggravated offence is fifteen years imprisonment. The maximum penalty for the other counts is 50 years imprisonment and a fine of 500, 000 Seychelles Rupees. The indicative minimum sentence for such aggravated offences is 15 years imprisonment.
- [14] However, this said the level of criminal culpability of the convicts would have to be assessed separately for the purposes of sentencing and this would obviously depend on their level of participation and involvement in the commission of the offences. Sentences have to be individualised.
- [15] On the other hand, there are certain mitigating factors in this case. The convicts are all first time offenders. They have pleaded guilty, saving the precious time of the court and the prosecution and prevented former co-accused with serious physical impairments from testifying. They have shown remorse and have expressed regret for committing the offences. These amount to attenuating factors that support a reduction in sentence under section 49 of MODA.
- [16] I have to accordingly find a balance between aggravation and mitigation in order for me to do justice in sentencing the convicts. Though not expressly stated, in section 38 (1) of MODA, I am of the view that the indicative minimum sentence regime provided for in that section would be more appropriate in cases where the accused are found guilty after a full

trial. It would be more challenging to apply it in instances such as this one where the accused pleaded guilty, as this would take away both the initiative and incentive of a guilty plea and the court's discretion in meeting out an appropriate sentence in accordance with the admitted facts which would affect the totality of sentencing principle.

[17] Given the nature of the case and severity of the charges I am of the view that the convicts merit custodial sentences, which must however be mitigated based on the circumstances mentioned above.

[18] Accordingly, I proceed to sentence the convicts as follows:

1. *I sentence the first convict to eight years imprisonment in count one.*
2. *I sentence the second convict to six years' imprisonment in count two.*
3. *I sentence the third convict to five years' imprisonment in count three.*
4. *I would sentence the fourth convict to five years' imprisonment in count four.*

[19] Their time spent on remand will be taken into consideration in these sentences.

[20] The convicts have a right of appeal against the conviction and sentence in this case.

Signed, dated and delivered at Ile du Port on 3 April 2020

