

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 257  
CR 30/2019

In the matter between

**THE REPUBLIC**  
(*rep. by David Esparon*)

and

**1. NED VALENCIA**  
(*rep. by Nichol Gabriel*)

**2. TREVOR PAYET**  
(*rep. by Clifford André*)

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**Neutral Citation:** *R v Valencia & Anor* (CR 30/2019) [2020] SCSC 257 (17 April 2020)

**Before:** Twomey CJ

**Summary:** First Convict – trafficking in a controlled drug possession of heroin amounting to 574.93 grams of pure heroin by doing or offering to do an act preparatory to or for the purpose of selling, supplying, transporting, sending, delivering or distributing the said controlled drug – plea of guilty – sentence  
Second Convict – Possession of a controlled drug namely 574.93 grams of pure heroin – plea of guilty – sentence

**Heard:** 3 February - 10 April 2020

**Delivered:** 17 April 2020

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**ORDER**

1. The First Convict is sentenced to eight years' imprisonment.
  2. The Second Convict is sentenced to five years' imprisonment.
  3. Given the aggravated nature of the offences by the two convicts neither are entitled to remission but time spent on remand will be taken into account for the reduction of the terms of sentences to be served.
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**SENTENCE**

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## TWOMEY CJ

- [1] The two convicts were originally charged together on 18 May 2019 on different counts of possession, trafficking, conspiracy and aiding and abetting in the trafficking of controlled drugs.
- [2] The Second Convict subsequently accepted a conditional offer from the Attorney General pursuant to section 61(A) of the Criminal Procedure Code to testify for the prosecution in exchange for being only charged with possession of controlled drugs. The charges were thereafter amended.
- [3] The First Convict pleaded guilty to trafficking in 974.47 grams of a substance with a heroin content of 574.93 grams of heroin by doing or offering to do any act preparatory to or for the purpose of selling, supplying, transporting, sending delivering or distributing the said controlled drug.
- [4] The Second Convict pleaded guilty to an alternative charge of possession of 974.47 grams of a substance with a heroin content of 574.93 grams.
- [5] The facts of this case as articulated by Learned State Counsel, Mr. Esparon, are that on 16 May 2019 while the Anti-Narcotics Bureau (ANB) were performing their duties at the airport cargo section, they received credible information that a person was seeking assistance from the clearing agents at the airport cargo terminal to clear a FedEx parcel addressed to the French Embassy. The ANB took the parcel which was addressed to Ambassador Lionel Majesté-Larouy and had it scanned but nothing suspicious was detected therein.
- [6] A physical search of the parcel then ensued and eight pots were retrieved from the package. Each pot contained three clear plastic sachets (24 packets in total), which after analysis were found to weigh 974.47 grams of substance with a heroin content of 574.93 grams.
- [7] A controlled delivery of the parcel was carried out and the First Convict arrived at the cargo terminal to collect the parcel in a car driven by the Second Convict. The First

Convict collected the parcel and placed it in the back seat of the car. Both convicts were thereafter arrested. The First Convict then damaged his mobile phone, although, he subsequently cooperated with the police to indicate two “drug barons” involved but they could not be arrested because there was no corroborating evidence. If the phone had not been destroyed this evidence may have been available.

[8] Both convicts admitted the facts as outlined by the prosecution. Learned Counsel, Mr. Gabriel and Mr. André, requested that probation reports be obtained in respect of the two convicts.

[9] With respect to the First Convict the report states that he is 23 years old and prior to his arrest was working as an officer with the Airport Fire and Rescue Services and residing with his grandmother. He has a two-year-old daughter who resides with her mother. The First Convict grew up mostly in the care and control of his grandmother as his parents separated when he was very young and his mother emigrated. He completed an advanced certificate in maritime studies and joined the Fire and Rescue Services.

[10] His partner and his mother describe him as a law-abiding citizen and state that they are shocked by what they see as his out of character behaviour.

[11] In a mitigation address, learned Counsel for the First Convict submitted that his plea of guilty is perhaps the biggest mitigating factor in the sense that he is showing remorse, has not wasted the court’s time, and that the timing of his plea could not be better in view of the current situation in regards to the COVID-19.

[12] He has added that the First Convict is a first offender and that he cooperated with the police by making a statement under caution in the presence of counsel whereby he recounted exactly what happened until he was arrested. On that basis, he was able to assist the ANB with the investigation of the case.

[13] With regard to the Second Convict, the Probation Officer states in her report that he is 29 years old and comes from a large family. He is in a relationship with one Jessy Bistoquet with whom he has a seven-year-old daughter but that they have separated since his remand into custody following his arrest. He graduated from the Seychelles Institute of

Technology with a certificate in carpentry and worked with Vijay Construction Company as a machine operator prior to his first drugs offence. In this respect, he served a prison sentence in 2015 and was released in 2016 after a review of his sentence by the Misuse of Drugs Act (MODA) Review Tribunal. This fact is in contradiction to Counsel for the prosecution alleging that the Second Convict was a first offender. On the Second Convict's own admission, and on the information from the Prison Services supplied to the Probation Officer, I find that the Second Convict was convicted on 2 February 2015 to five years' imprisonment for possession of controlled drugs on CR.S 15/14. He is not therefore a first offender.

[14] Learned Counsel for the Second Convict has submitted that the court ought to take into account section 47 (4) of MODA and not take into consideration any aggravating factors in this offence as the biggest mitigating factor - that of turning state witness - would outweigh such factors.

[15] Sections 47 and 48 of MODA provide in relevant part:

*“(2). Where an aggravating factor or mitigating factor identified in section 48 or section 49 applies to the circumstances of an offence, the court shall expressly identify that factor and give weight to it in considering the appropriate sentence.*

...

*(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.*

*(5). In sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the Court shall have due regard to the indicative minimum sentence for aggravated offences of that kind.*

*48 (1) Aggravating factors (factors that support a more serious offence) for offences under this Act include*

*(a) the presence and degree of a commercial element in the offending, particularly where controlled drugs have been imported into Seychelles;*

*(b) the involvement in the offence of an organised criminal group to which the offender belongs;*

*(h) prior convictions . . . particularly for similar offences . . .”*

[16] The maximum penalty for the offence with which the First Convict has been charged is life imprisonment and/or a fine of SCR750,000 and the indicative minimum sentence where the offence is aggravated is 20 years’ imprisonment.

[17] The maximum penalty for the offence with which the Second Convict has been charged is 15 years’ imprisonment and/or a fine of SCR300,000 and the indicative minimum sentence when aggravated is 8 years’ imprisonment.

[18] I take into consideration the mitigation speech by learned counsel on behalf of each of the convicts. In the case of the First Convict, I note that he 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.

[19] However, in terms of the provisions of section 48 above, I find several aggravating factors to the offence in the instant case. The facts of the case clearly indicate that this was an imported drug and that it involved a drug gang. He also destroyed phone evidence capable of identifying the main offenders in this case.

[20] I also note that this was a large amount of drug and that the agreed and adopted sentence guidelines for a quantity of 400 grams to 600 grams of Class A drugs is from 15 to 20 years’ imprisonment.

[21] In *R v Mashed Kamba* (CO 68/2019) [2020] SCSC 24 (17 January 2020) a first offender who pleaded guilty to trafficking 317.49 grams of heroin was sentenced to a term of 6 years’ imprisonment. In *R v Chilaule* (CO 26/2018) [2018] SCSC 890 (30 October 2018) a first offender who pleaded guilty to the importation and trafficking of 1711 grams of heroin was sentenced to two terms of 15 years’ imprisonment to run concurrently.

- [22] In the case of *Republic v Natasha Breugelmans* (2009) SLR 9 an accused charged with the offence of importation of a controlled drug (112.3 grams of heroin) contrary to Section 3 of the Misuse of Drugs Act 1994 pleaded guilty and was sentenced to 10 years' imprisonment. In *Kevin Barbé v Republic* [2010] SCA 11, the accused was convicted of the importation of 402.49 grams pure heroin and was sentenced to 11 years' imprisonment.
- [23] In keeping with the authorities above and bearing in mind both the mitigating and aggravating factors, I sentence the First Convict to 8 years' imprisonment.
- [24] The Second Convict's previous conviction is not spent and is an aggravating factor in this case despite the existing mitigating factors. I therefore sentence him to 5 years' imprisonment.
- [25] Given the aggravated nature of the offences by the two convicts neither are entitled to remission but time spent on remand will be taken into account for the reduction of the terms of sentences to be served.
- [26] The convicts have the right of appeal against both conviction and sentence within thirty working days of this order.

Signed, dated and delivered at Ile du Port on 17 April 2020

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Twomey CJ