

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 381

Cr.S. No 07/20

In the matter between

THE REPUBLIC

(rep. by Joshua Revera)

and

LENNY BASTIENNE

(rep. by Nichol Gabriel)

Neutral Citation: *R v Bastienne* (Cr.S 07/2020) [2020] SCSC 381 (6 July 2020).

Before: Twomey CJ

Summary: Trafficking in a controlled drug – 129.34 grams of cannabis resin – conviction on guilty plea – mitigation – suspended sentence of two years and a fine of SR 15,000.

Heard: 8 June 2020

Delivered: 6 July 2020

ORDER

The accused is sentenced to two years imprisonment suspended for two years and a fine of SR15,000. Default in payment of the fine within 30 days hereof will result in the convict serving a term of 6 months imprisonment.

SENTENCE

TWOMEY CJ

[1] The convict, Lenny Bastienne of Anse aux Pins, has pleaded guilty to the charge of trafficking in a controlled drug namely of 129.34 grams of cannabis contrary to section 7(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 cannabis was found by the ANB in a car Registration number S15027 at Anse aux Pins driven by the convict with three other persons on 24 January 2020. The car was parked and the occupants including the convict refused to open the doors or windows of the same when asked to do so by the ANB. The ANB officers were able to observe the convict place a packet made of cling film in a black handbag under the driver's seat. The ANB officers threatened to break the windows of the vehicle and the occupants thereafter opened the doors and were arrested. The substance under the driver's seat was analysed and found to be cannabis resin weighing 129.34 grams.

[3] Further the sum of SR 32,323 was found in the bag containing the cannabis.

[4] The accused pleaded guilty to the charge and a probation report was called for. The report states that the convict is 25 years old with no dependents. He lives with his girlfriend at her family's house. He works as a casual labourer. He claims the drugs were for his own consumption and that he buys large quantities and keeps it for long term use and not for commercial purposes.

[5] I have directed my attention to section 9 (2) of MODA which provides:

“Where a person is charged with an offence under this section and the Court is of the opinion that the person is not guilty of that offence but is guilty of an offence under section 8, the Court may convict the person of the offence under section 8 even though the person was not charged with the offence.”

[6] Despite the convict's averment to the Probation Officer as stated in Paragraph 4 above, I am not of the opinion, given the particular facts as outlined by State Counsel that the convict is guilty of an offence under section 8 and not section 7 of MODA. Contained in the bag of drugs was also a substantial amount of cash - more proof of selling than buying if I may say so. The convict's story is therefore viewed as an insult to my intelligence.

[7] 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:

“(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.”

[8] 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 and that at the very outset of the case, he has pleaded guilty, thereby expressing remorse and regret. He expects the mercy and leniency of the Court.

[9] Moreover, in the present case I note that none of the aggravating factors as set out in section 48 are present while there are in fact several of the mitigating factors as set out in section 49 of MODA

[10] In the circumstances, for the purpose of deterrence of similar offences I sentence the convict to a term of two years (2) imprisonment which I suspend for a period of two (2) years. I also order the convict to pay a fine of SR Fifteen Thousand. Default in payment of the fine within 30 days hereof will result in the convict serving a term of 6 months imprisonment.

Signed, dated and delivered at Ile du Port on 6 July 2020.

Twomey CJ