

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 422  
CO 21/2020

In the matter between

**THE REPUBLIC**  
(*rep. by Langsinglu Rongmei*)

and

**1. GAITANE GUILLAUME**  
(*rep. by Nichol Gabriel*)

**1<sup>st</sup> Accused**

**2. ALDRIAN SOPHOLA**  
(*rep. by Alexia Amesbury*)

**2<sup>nd</sup> Accused**

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**Neutral Citation:** *R v Guillaume & Anor* CO 21/20 [2020] SCSC 422 (13 July 2020)

**Before:** Twomey CJ

**Summary:** Guilty pleas on charges of trafficking heroin – sentence

**Heard:** 22 June 2020

**Delivered:** 13 July 2020

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**SENTENCE**

The First Accused is sentenced to three years’ imprisonment and the Second Accused to four years and six months’ imprisonment.

The time spent in remand will count towards sentence. They are also entitled to remission if they are of good behaviour and stay off drugs whilst serving their terms of imprisonment. They are to be placed on rehabilitation programme for their drug addiction

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**TWOMEY CJ**

[1] The accused persons have each been charged with one count of trafficking in a controlled drug contrary to section 7(1) of the Misuse of Drugs Act and read with section 2 of the Misuse of Drugs Act.

- [2] The particulars of the offences 1. Gaitane Hazel Guillaume resident of Beau Vallon, Mahe on 4 March 2020 at her residence, Beau Vallon, Mahe was found trafficking in a controlled drug namely heroin (diamorphine) with a net weight of 22.38 grams containing 71% purity of heroin content of 15.88 grams by means of selling and/or brokering the said controlled drug and 2. Aldrian Shiva Sophola resident of St Louis, Mahe on 4 March 2020 at Beau Vallon, Mahe was found trafficking in a controlled drug namely heroin (diamorphine) with a net weight of 50.20 grams containing 71% purity of heroin content of 35.46 grams
- [3] The facts of this case as summarised by Learned State Counsel, Mrs. Lansinglu, are that on 4 March 2020 the Anti-Narcotics Bureau (ANB) received credible information that a drugs transaction was taking place at the residence of the First Accused. On arriving at the scene the ANB officers found a person standing outside the front door who then ran upstairs to a bedroom. The officers followed him to the bedroom where they found the First Accused who was informed that a search would be carried out. During the search, a piece of cling film was found wrapped around some black plastic under a bunch of artificial flowers. The same was removed and shown to the First Accused who stated that it had been supplied to her for sale by the Second Accused.
- [4] She then in the presence of the ANB officers called the Second Accused asking him to deliver 50 grams of heroin to her. He agreed and arrived at 11.30 am at the house of the First Accused. When he saw the ANB officers he sped away, accelerating and nearly hitting the ANB officers. While driving away he threw a packet of cling film in the grass which was retrieved. He crashed his car into the car of the ANB officers who had blocked his exit and he was apprehended and taken to his place of residence at St. Louis, where he was living with his partner. The premises were searched and in a bedroom shared by the Second Accused, the ANB recovered money amounting to SR 54,550 and Euro 510 and all was seized. The substance that the Second Accused had thrown away and which was recovered was analysed and was confirmed to be diamorphine with a net weight of 50.20 grams and a heroin content of 35.64 grams.
- [5] Both Accused accepted the facts as stated by Counsel for the prosecution.

- [6] Probation reports were obtained for both accused persons.
- [7] With respect to the First Accused, the Probation Officer states that she is 41 years old and at the time of her arrest she was living with her partner. They have five children who have been placed in foster care because of both their parents' drug use. She had at one time been a teaching assistant at the Independent School and then worked at the Ministry of Education and the Children's House Montessori. She then went on to work in the International School and subsequently the Island Development Company. She has since her dependency on heroin been unable to maintain steady work. She complains of several health ailments which she herself states are as a result of her drug use. She has twice been on a methadone treatment programme and is presently on such a programme. She expresses regret for the offence. She admits selling the drugs in order to maintain her addiction and to contribute to her children's maintenance needs. She claims that she is no longer using drugs and has reflected on how to rebuild her life.
- [8] It is noted however that in a drug test conducted on the First Accused on 15 June she tested positive for opiates, cocaine, methadone, Tetrahydrocannabinol (THC) and Phencyclidine also known as angel dust (PCP). When questioned about these results she stated to the court that she was using anything she found in prison as her "head was disturbed" and the court ought to decide what to do.
- [9] In mitigation of the First Accused's sentence her counsel has submitted that she is a first offender, has pleaded guilty and has shown remorse for her actions and expects leniency from the court. She is also drug dependent and pursuant to section 39 of MODA is entitled to be assisted to alleviate her drug dependency. She also cooperated with the ANB officer and did not try to avoid arrest.
- [10] With respect to the Second Accused the Probation Report states that he is 23 years old. He had previously studied Business Management at the University of Seychelles but had not completed the course. He claims to have been drug dependent primarily on heroin. He states that he is depressed as a consequence of the departure of his twin brother overseas leaving him with his mother and financial troubles. At the time the offence was committed he was living with his girlfriend and was unemployed. He had met the First

Accused through some of his friends. He claims that he engaged in the offence to support his own drug dependency and to also earn money as the First Accused would pay him for transporting the drugs for her. He expressed remorse and apologised to the court and has asked for a non-custodial sentence and a second chance. He states that he has now detoxed and is drug free and will maintain that status.

[11] It is noted that a drug test performed on the Second Accused on 19 June 2020 yielded a positive result for THC.

[12] In her submissions in mitigation of the Second Accused's sentence, Defence Counsel has submitted that he is a first offender and has pleaded guilty indicating that he did not wish to waste the court's time. She submits that although he is not drug dependent in terms of section 36(1) of MODA he has taken responsibility for his actions and in pursuance of section 38(3) of MODA the court ought to order measures directed towards the Second Accused's education, rehabilitation and social reintegration into society. She submits that he has taken responsibility for his action and is drug free, this despite the fact that the drug test carried out on 19 June proved otherwise.

[13] The provisions of the offence under section 7 of MODA as read with the Second Schedule of MODA with which the two accused have been convicted, makes it clear that the maximum penalty for the offence is life imprisonment and/ or a fine of SCR750, 000. The indicative minimum sentence where the offence is aggravated is 20 years' imprisonment.

[14] I take into consideration the mitigation speeches and the probation reports in respect of the two accused persons. I note that the amount of pure drug content in respect of the First Accused was 15.88 grams and in respect of the Second Accused was 35.46 grams and I note that the recommended sentence is from 5 to 8 years for a quantity of 10 to 50 grams of heroin. I also bear in mind the rule of thumb of granting up to a third off a sentence when the accused pleads guilty.

[15] In *Michael Julienne v R* (Criminal Appeal SCA26/2018) [2019] SCCA 25 (23 August 2019), the Court of Appeal maintained a sentence of 5 years imprisonment for a

conviction on a guilty plea of trafficking in a controlled drug where the substance had a pure heroin content of 10.5 grams. Similarly, the Court of Appeal in *Danny Dodin & Anor v R* (Criminal Appeal SCA 36 & 37/2016) [2018] SCCA 13 (11 May 2018) maintained a sentence of 4 years and 6 months' imprisonment for convictions on guilty pleas for possession of 23 grams of pure heroin.

[16] Given all the circumstances of the case and the mitigating and aggravating factors, I therefore sentence the First Accused to three years' imprisonment and the Second Accused to four years and six months' imprisonment.

[17] I further order that the time spent in remand count towards sentence. They are also entitled to remission if they are of good behaviour and stay off drugs whilst serving their terms of imprisonment. I direct the Superintendent of Prisons to place the two accused persons on a rehabilitation programme in respect of their drug dependency.

[18] They both 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 13 July 2020.

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Twomey CJ