

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 437

Cr S 84/2019

In the matter between

THE REPUBLIC

(rep. by Joji John)

and

GUYTO FIGARO

(rep. by Anthony Juliette)

Neutral Citation: *R v Figaro* Cr S 84/2019 [2020] SCSC 437 (20 July 2020)

Before: Twomey CJ

Summary: possession of heroin amounting to 3.33 grams of pure heroin giving rise to the presumption of having possessed the drug with intent to traffic the same.

Heard: 3 March - 6 June 2020

Delivered: 20 July 2020

SENTENCE

The convict is sentenced to a term of one year's imprisonment suspended for two years

TWOMEY CJ

[1] The convict pleaded guilty to a charge of possession of 8.33 grams of a substance with a heroin content of 3.33 grams of pure heroin which gives rise to a presumption of having possessed the drug with intent to traffic the same.

[2] The facts of this case as articulated by Learned State Counsel, Mr. John, are that on 12 February 2019 the Anti-Narcotics Bureau (ANB) received credible information that the convict was selling drugs at Remise Estate at Anse Royale.

- [3] The ANB officers conducted an observation of the scene and found the convict coming out of the bushes. They searched the area and found a clear plastic bag which was shown to the convict and then opened in his presence. The bag contained a piece of clear plastic containing a substance, together with a digital scale and two razor blades. The accused also had a backpack which was found to contain SR 10,775. The substance seized was analysed and found to weigh 8.33 grams and to contain 3.33 grams of pure heroin. The digital scales also had traces of heroin. The accused admitted in a statement under caution that the money seized from the backpack was money from the sale of drugs.
- [4] The convict also admitted the facts as outlined by the prosecution. Learned Defence Counsel, Mr. Juliette, requested that a probation report be obtained in respect of the convict.
- [5] The report obtained states that the convict is 29 years old and is in a relationship with Raphaella Matombe with whom he has a six-month old child. Prior to his arrest, he was a self-employed farmer. He also states that he is a recovering heroin user. He states that the drugs found was for his own personal consumption and also to sell to fund his own habit. He states that he is now on a methadone programme and is making an effort to rehabilitate himself. The convict's mother supports his statement as to the positive transformation in this behaviour over the past few months.
- [6] In a mitigation address, learned Defence Counsel has also asked the court to take note of the convict's physical appearance, which has transformed since his arrest. Counsel has reiterated that the convict suffers from drug addiction but that he has sought and is receiving help for his addiction. Defence Counsel has also submitted that the convict's plea of guilty has not wasted the court's precious time and he pleads for leniency.
- [7] Sections 47 of MODA 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] The maximum penalty for the offence with which the convict has been charged with is life imprisonment and/or a fine of SCR750, 000 and the indicative minimum sentence where the offence is aggravated is 20 years' imprisonment.
- [9] I take into consideration the probation report and the mitigation speech by learned counsel on behalf of the convict. I note that 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.
- [10] I also note that the agreed and adopted sentence guidelines for a quantity of more than 2 grams up to 10 grams of Class A drugs is two to five years of imprisonment.
- [11] In the circumstances and for the purpose of deterrence for similar offences by the convict, I sentence him to a term of a term of one year's imprisonment suspended for two years.
- [12] 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 otherwise trigger the one-year sentence of imprisonment.
- [13] The convict has the right of appeal against both conviction and sentence within thirty working days of this order.
- [14] I further order that the sum of SCR 10,775 seized from the convict be forfeited to the State.

Signed, dated and delivered at Ile du Port on 20 July 2020

Twomey CJ