

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 489
CO 91/2019

In the matter between:

THE REPUBLIC
(rep. by Citra Morel)

Republic

and

AKIM CESAR
(rep. by Clifford Andre)

Accused

Neutral Citation: *Republic v Cesar* CO91/2019 [2020] SCSC 489 27 July 2020

Before: Burhan J

Heard: 20 July 2020

Delivered: 27 July 2020

ORDER

Convict sentenced on Count 1 to 6 months imprisonment

Convict sentenced on Count 2 to 3 months imprisonment

Both sentences to run concurrently.

SENTENCE

BURHAN J

- [1] The convict Akim Cesar has been charged with the offences of Trafficking in a controlled drug namely Heroin net weight 3.60 grams of Heroin (pure quantity 1.97 grams) and Obstructing an officer of the NDEA (National Drug Enforcement Agency) in the exercise of his functions. The statement of offence in both Counts read as follows:

Count 1

Trafficking in a controlled drug, having been found in unlawful possession of a controlled drug with intent to traffic, contrary to Section 9 (1) as read with Section 19 (1) (c) of the Misuse of Drugs Act, 2016 and punishable under Section 7 (1) as read with the Second Schedule of the Misuse of Drugs Act, 2016.

Count 2

Obstructing an officer of the National Drugs Enforcement Agency in the exercise of his functions contrary to Section 35 (1) (a) of the Misuse of Drugs Act, 2016 (Act 5 of 2016) and punishable under Section 35 as read with the Second Schedule of the same said Act.

- [2] The convict pleaded guilty to the said charges without proceeding to trial. In mitigation learned Counsel Mr. Clifford Andre stated, the convict had pleaded guilty without wasting the time of Court and moved that the convict be given a non- custodial sentence and that a reasonable fine be imposed on him, giving due consideration to the facts set out in the probation report given in case CO 92/2019. It was agreed by parties that as the convict was the same in both cases 91 and 92 of 2019, the probation report already given in case CO 92/2019 be used in this case as well.
- [3] I have considered the facts set out in the probation report. The convict is 22 years of age. The convict is admittedly a drug user and admits he is a user of Cannabis and Heroin. It appears from the report that he was expelled from school after an altercation with the Head of the School. He had been compelled to do casual jobs thereafter. He had begun to indulge in drugs since the age of 11. It appears from the report that his parents had separated and the influence of his step-father had resulted in his involvement with controlled drugs.
- [4] I have considered the plea in mitigation and the facts contained in the probation report. The convict is a first offender aged 22 years. He has expressed remorse and regret by pleading guilty at the very first opportunity and by doing so also saved the time of Court. I am inclined to accept the submission of learned Counsel for the convict that the quantity of controlled drug is small. I also observe that the offence was committed as far back as May 2017 and the charge filed in December 2019. In **Pascal Fostel v Republic 2014 SCCA 24**,

the Seychelles Court of Appeal held that inordinate delay not based on the fault of the convict is a ground to reduce the penalty on the convict.

[5] However the controlled drug in Count 1 is a Class A controlled drug. The recommended sentence for such an offence is a maximum of two years and a fine. As the convict has pleaded guilty he is entitled to a discount on the said sentence. In Count 2, I observe that the particulars of offence indicated that the convict had pointed a penknife at the said agent and threatened him, thereby obstructing the performance of his duty. I consider this as an aggravating factor.

[6] Having thus considered all the aforementioned factors in mitigation and the relevant law, I proceed to sentence the convict as follows:

Count 1 --- A term of 6 months imprisonment.

Count 2--- A term of 3 months imprisonment. Both terms to run concurrently.

[7] Time spent in remand to Count towards sentence. The convict is entitled to remission at the discretion of the Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 27 July 2020



Burhan J