

**SUPREMECOURT OF SEYCHELLES**

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**Reportable**

[2020] SCSC 600

Cr.S. 05/2020

In the matter between

**THE REPUBLIC**

*(rep. by Ananth Supramanian)*

and

**1. FRANCISCA SAMEJA**

*(rep. By Nichol Gabriel)*

**2. DOMINIC DUGASSE**

*(rep. by Clifford André)*

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**Neutral Citation:** *R v Sameja & Anor* (CO 05/2020) [2020] SCSC 600 (1 September 2020)

**Before:** Twomey CJ

**Summary:** First convict-aiding and abetting another to traffic in a controlled drug namely 156.86 grams of pure heroin - plea of guilty - sentence

**Heard:** 15 June 2020

**Delivered:** 1 September 2020

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**SENTENCE**

The First Convict is sentenced to three years' imprisonment. Time spent on remand will be taken into account for the reduction of the terms of sentences to be served. She is also entitled to remission if she is of good behaviour whilst serving her term of imprisonment.

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**TWOMEY CJ**

[1] The two convicts were originally charged together on 20 January 2020 on different counts of trafficking, conspiracy and aiding and abetting in the trafficking of controlled drugs.

- [2] The Second Convict subsequently pleaded guilty to aiding and abetting the First Convict on or around 6 January 2020 to traffic in a controlled drug by intending to transport the same from Mahé to Praslin, the drugs and was sentenced to 8 years' imprisonment.
- [3] The First Convict on the first day of her trial on 2 July 2020 changed her plea to one of guilty to the second count of the offences with which she had been charged, namely trafficking in a controlled drug by means of being found in unlawful possession of a substance having a total heroin content of 156.85 grams giving rise to a rebuttable presumption of having the same with intent to traffic contrary to section 9 (1) read with section 19(1) (c) of the Misuse of Drugs Act 2016 (MODA) and punishable under Section 7 (1) read with the Second schedule of the said Act.
- [4] The facts of this case as summarised by Learned State Counsel, Mr. Supramanian, are that on 8 January 2020 the Anti-Narcotics Bureau (ANB) received credible information that the First Convict was in possession of a large quantity of drugs and that she was transporting the same to Praslin on the Cat Coco ferry. She was observed by the ANB at the inter-island quay on Mahe and her handbag searched wherein two packets of a substance wrapped in cling film was found and Second Convict. A search was again carried out in her bag and a blue Samsung phone and cash amounting to SCR 3100 recovered. The drugs were analysed revealing the weight of the substance as being 447.45 grams with a purity of heroin of 156.85 grams.
- [5] The First Convict accepted the facts as stated by Counsel for the prosecution.
- [6] Mr. Gabriel, Counsel for the First Convict requested that a probation report and a medical report be obtained in respect of the First Accused.
- [7] The report states that the First Convict is 34 years old, living at her mother's. She has five children from different relationships. She dropped out of school in Secondary Four and has worked in housekeeping in different hotels. She then worked in a hairdressing salon and is currently working at Anse Etoile as a shop assistant.
- [8] She has only one kidney and suffers from chronic back pain. She has gall bladder problems and is awaiting surgery for the same. A medical note showed to the Court on

17<sup>th</sup> August 2020 confirms that the First Accused is scheduled for a cholecystectomy (removal of the gall bladder). This is accepted by the Prosecution.

- [9] The Probation Report states that the First Convict is having difficulty obtaining maintenance money for her children from their respective fathers and that her salary is not enough for the family's upkeep. The report states that the First Convict saw the transaction as an opportunity to get money to buy necessities for her children. She has never been involved in drug offences or other offences. The First Convict states that she regrets what she has done but begs the court not to send her to prison because of the impact on her family and her health status.
- [10] In a mitigation address, learned Counsel for the First Convict has submitted that apart from the guilty plea of the First Convict, which has resulted in not wasting the court's time and resources her remorse is also a substantive factor. She also cooperated fully with the ANB by giving a full disclosure of the events. Counsel has also submitted that the offence is not aggravated given that the amount of drugs involved is below 200 grams. Counsel has also submitted that the reasons for engaging in the crime though ill-founded is understandable given her economic plight and that of her family
- [11] The provisions of the offence under section 7 of MODA as read with the Second Schedule of MODA with which the First Convict 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.
- [12] I also note that the amount of pure drug content was 156.85 grams and the agreed and adopted sentence guidelines for a quantity of more than 50 grams up to 200 grams of Class A drugs is a sentence of 8 to 12 years' imprisonment.
- [13] Counsel has submitted that in terms of section 48 of MODA there are no aggravating circumstances in this case. This is accepted.
- [14] In considering the other mitigating factors outlined by the Probation Report and Counsel for the First Convict, I bear in mind the provisions of sections 47 and 49 of MODA.

[15] I take into consideration the mitigation speech by Learned Counsel on behalf of the First Convict. I am particularly concerned about the further impoverishment of five children who are directly impacted by their mother’s behaviour. In this regard, the apprehension of the First Convict’s mother that she cannot look after the First Convict’s children and her own teenager at the same time and singlehandedly is a matter that should be given serious consideration and I direct that Social Services follow up on the Probation Report to provide support to the family as required to ensure the health and well-being of these children.

[16] I am also concerned about the medical condition of the First Convict. She was hospitalised while awaiting trial and admitted to hospital. She now awaits further treatment.

[17] In *R v Azemia* (CR 62/2019) [2019] SCSC 1103 (11 December 2019), a sentence of four and a half years was imposed on a first offender who had been convicted on a guilty plea of trafficking 358.6g of a controlled drug with a heroin content of 194.36g. In *R v Holder* CR46/2018) [2018] SCSC (9 April 2018) a sentence of five years imprisonment was imposed on a first time offender who had imported into Seychelles 404.4 grams of pure heroin. In this case, there were exceptional and special circumstances in that the convict was a rape victim, contracted the HIV virus, was HIV positive at the time of sentencing and receiving treatment. She was a South African national and the court was told that it was the intention of the government to immediately repatriate her.

[18] In *Holder*, the court also reminded itself of the Court of Appeal’s dicta in *Poonoo v Attorney-General* (2010) SLR 361, that:

*“Sentencing involves a judicial duty to individualize the sentence tuned to the circumstances of the offender as a just sentence...”*

[19] This court endorses this approach to sentencing and takes into account all the factors in the present case. There is a need to impose a sentence that should prove to be both preventative and reformative. As in *Holder* there are in the instant case both special and exceptional circumstances. While the punishment should fit the criminal as well as the

crime, it should be blended with a measure of mercy that reflects the particular circumstances of the convict. In this case, the convict is in a fragile state of health.

[20] In keeping with the authorities above and bearing in mind the special mitigating factors in the instant case, I therefore sentence the First Convict to three years' imprisonment.

[21] I further order that the time spent in remand count towards sentence. The convict is entitled to remission if she is of good behaviour whilst serving the term of imprisonment.

[22] The First Convict has 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 1 September 2020.

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Twomey CJ