

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2020] SCSC 658

Cr.S. No 94/2019

In the matter between

**THE REPUBLIC**

*(rep. by Eisha Benoiton)*

And

**JEAN-EVE ANTOINE SERVINA**

*(rep. by Joel Camille)*

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**Neutral Citation:** *R v Servina* (Cr. S 94/2019) [2020] SCSC 658 (14 September 2020).

**Before:** Twomey CJ

**Summary:** cultivation of a controlled drug (50 cannabis plants) - conviction on guilty plea

**Heard:** 26 August 2020

**Delivered:** 14 September 2020

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**ORDER**

On the charge of cultivation of fifty cannabis plants, the convict is sentenced to a term of one-year imprisonment, which is suspended for two years. On the second count of possession of 174.50 grams of cannabis with intent to traffic, the convict is sentenced to one-year imprisonment which is suspended for two years and to run concurrently with the first count. In respect of the second

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**SENTENCE**

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**TWOMEY CJ**

[1] The convict has pleaded guilty to the offence of cultivation of a controlled drug, namely 50 cannabis plants outside his residence at Belonie, Mahe, contrary to section 6 (2) read

with section 21(3) and punishable under the Second Schedule of the Misuse of Drugs Act 2016 (MODA).

- [2] The statutory punishment for the offence is a maximum of twenty years' imprisonment.
- [3] The facts as outlined by the learned State Counsel are to the effect that on 11 February 2018, the ANB Officers while patrolling an area at Pascal Village came across the accused who was walking. He was searched and found to have herbal materials on his person. He was asked where he had obtained the material and he told the police that he had a plantation at Belonie. He showed the police the plantation where the fifty plants were found to be growing. The plants measuring 1cm to 6 cm in length were analysed and found to be cannabis.
- [4] In mitigation, learned Counsel for the Defence has stated that the accused is a first time offender and pleaded guilty at the first opportunity thereby saving the court's time and for which he must be given credit. Counsel has also relied on a probation report produced in relation to the accused.
- [5] The report states that the accused who is 21 years of age lives in emergency accommodation with his parents and 9-year-old brother, their home having burnt down six years previously. The accused's mother is unable to work because of a medical ailment whilst his father is a self-employed architect. The accused left his training programme at the Maritime Training Centre before completion of the course. He has been in casual labour with various companies, never staying long in any given place.
- [6] He has admitted to starting smoking cannabis at the age of 18 and to continuing using it. He had grown the plants after googling the process on the internet. He expressed his regrets and pleaded for forgiveness and begged not to be sent to prison. He stated that he had learnt his lesson. His mother also asked the court to give her son another chance.
- [7] I have at this juncture drawn my attention to section 47 of MODA which provides in relevant part:

*“(1) in sentencing a person convicted of an offence under part of this Act, whether upon a guilty plea or following trial, the Court shall have regard to*  
*(a) the objectives of the Act*  
*(b) the degree of control to which the relevant controlled drug is subject; and*  
*(c) the general objectives of transparency and proportionality in sentencing.*

*(2) Where an aggravating or mitigating factor identified in section 48 or section 39 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence...”*

[8] I give consideration to all the factors raised by Counsel for the accused and the Probation Report. I have looked at the authority of *R v Pascal Robin Malvina*, SC 231/2018 (unreported) for sentence guidance with respect to the cultivation of cannabis. In that case, the convict pleaded guilty to cultivating 95 grams of cannabis. He was sentenced to a fine of SR5, 000 and a default sentence of two years if he failed to pay the fine within two weeks. The Court referred the convict to the Probation Division for him to engage in an appropriate community-based program. In *R v Delpech*, (CO 67/2019) [2020] SCSC 91 (07 February 2020), the accused was sentenced to a term of term of one-year imprisonment, which was suspended for two years for the cultivation of four cannabis plants.

[9] In the present case, the weight of drugs is not stated although it appears that the plants were still miniscule.

[10] I therefore sentence the accused to a term of term of one-year imprisonment, which is suspended for two years. He is further sentenced to a fine of SR 5,000 payable by the end of December 2020, in default of which he shall serve six months’ imprisonment.

[11] The convict has a right of appeal against the conviction and sentence in this case.

Signed, dated and delivered at Ile du Port on 14 September 2020.

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Twomey CJ