

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC ...

CO39/2020...

In the matter between :

THE REPUBLIC

(rep. by Joshua Revera)

and

DANIEL GEORGES FRED

(rep. by Mr Anthony Juliette)

Accused

Neutral Citation: Republic v *Fred* (CO39/2020) [2020] SCSC (30 September 2020).

Before: Govinden J,

Summary: Possession of a controlled drug (cannabis) with intent to traffic - sentence

Heard: 11 August 2020

Delivered: 30 September 2020

ORDER

The accused is sentenced to: A fine of SR30,000.00 to be paid before the end of October 2020, In default of payment of the fine of SR30,000, the convict is to serve a term of 6 month imprisonment.

Time spent in remand to count towards sentence. The convict is entitled to remission at the discretion of the Superintendent of Prisons if he is to serve the default sentence.

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

SENTENCE

GOVINDEN J

The convict is a 36 year old resident of Rochon, who on his own guilty plea, has been convicted of a criminal offence namely:

COUNT 1

Statement of Offence

Possession of a controlled drug with intent to traffic contrary to Section 9(1) read with Section 19(1) of the Misuse of Drugs Act 2016 and punishable under Section 7(1) specified in the 2nd Schedule of the said Act.

Particulars of Offence

In that Daniel Georges Fred of Rochon, Mahe, on the 5th of January 2019, at Rochon, Mahe, was found in possession of a controlled drug namely Hashsih (cannabis resin) with a total net weight of 412.19 grams which gives rise to a rebuttable presumption of having been in possession of the said 412.19 grams of Hashsih (cannabis resin) for the purpose of possession with intent to traffic.

[1] The brief facts of the case are that on Saturday the 5th of July the Anti Narcotic Bureau the Seychelles Police Force went to the house where the convict lives. At the premises the officers met Desire Fred, the father of the convict and they informed him that a search will be conducted in his house. A sniffer dog was used in the search. The dog was being handled by officer Mellie. During the search it gave an indication that a controlled drug was in a bag found in a room of the house. Mr Desire Fred confirmed that the room belonged to his son Daniel Fred. The bag was opened in the presence of Desire and a dark substance suspected to be a controlled drug was found in the bag. Daniel Fred was brought in the room and was shown the suspected controlled drug. The said drug was then sealed and sent for analysis and it was found that it consisted of 412.19 grams of cannabis resin. This is the same controlled drug that the convict was charged with and to which he pleaded in this case. These facts were admitted by the convict.

[2] The Court note that no trafficking paraphernalias were found during the search and no money in loose denomination were seized, which are the usual signs of the offence of drug trafficking.

[3] Learned Counsel for the convict moved the Court in mitigation to impose a lenient sentence on the convict for the following reasons:-

1. He is a first time offender.
2. He has pleaded guilty and save the Court's time and expenses of a trial.
3. There are no aggravating factors in this case.
4. The controlled drug is a Class B Schedule controlled drug.
5. He cited a list of cases similar on the fact to this one wherein a suspended sentence and fines had been imposed.
6. The controlled drug was for the convict's personal consumption.

[4] In passing the sentence I take into consideration the provision of Section 47(4) of the Misuse of Drug's Act which provides that:-

In sentencing a person convicted of an offence under Section 8 of this Act the Court shall not imposed a sentence of imprisonment unless satisfied that a non custodial sentence is in appropriate in all the circumstances.

[5] I further take into consideration the main purpose of sentencing are various, the protection of society, the deterrent of the offender and of others who might be tempted to offend, to have retribution and to reform and rehabilitate the convict. The purposes overlap and none of them can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. In addition it was held in R versus Aden (2011) SLR 41 reference is given that when determining sentence, the Court may be lenient to first time offenders and where they need another chance to reform and join society. The Court therefore may in its discretion take into account the circumstances of the accused.

[6] Counsel for the convict has also submitted that there are no aggravating factors in this case. In Morin versus R SCA CR11/2002) [2003] SCCA 19 (11 April 2003) the Court of Appeal held that a Court should, in the absence of serious aggravating factors, be slow to sentence a first time offender to a term of imprisonment if the offender can be

appropriately dealt with in some other ways and that much will depend on the facts and gravity of each case.

[7] In the circumstances and taking all matters above into account, I hereby sentence the convicted person as follows:

(a) I imposed a fine of Rs30.000/- to be paid before the end of October 2020. In default of payment of the fine of Rs30,000/-, the convict is to serve a term of 6 months imprisonment.

(b) Time spent on remand is to count towards the sentence. The convict is entitled to remission at the discretion of the Superintendent of Prisons if he is to serve the default sentence.

(c) The convict has a right of appeal against the conviction and sentence in this case.

(d) All bail conditions imposed on the accused person is accordingly removed.

Signed, dated and delivered at Ile du Port on 30 September 2020

Govinden J