

IN THE SUPREME COURT OF SEYCHELLES

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**Reportable**

[2020] SCSC 786

CR 14/2020

CB 751/17 NDEA

**REPUBLIC**

(rep. by Aaishah Molle)

**Prosecution**

and

**MICHAEL ANDREW JEAN**

(rep. by Karine Dick)

**Accused**

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**Neutral Citation:** *Republic v Michael Andrew Jean* (CS 14/2020) [2020] SCSC 786 (19 October 2020).

**Before:** Vidot J

**Summary:** Trafficking and possession of a controlled drug

**Heard:** 16 October 2020

**Delivered:** 22 October 2020

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**ORDER**

Sentence on count 1 to two years imprisonment suspended for two years and a fine of SR7000.00 and in default to 3 months imprisonment

Count 2 to one month imprisonment suspended for three months

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**SENTENCE**

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**VIDOT J**

[1] The Accused was convicted on his own guilty plea for the following offences;

Count 1

Statement of Offence

Trafficking in a controlled, having been found in custody or control 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.

#### Particulars of Offence

Michael Andrew Jean, holding NIN 976-0963-1-1-15 and a resident of Corgate Estate, Mont Fleuri, on the 21<sup>st</sup> August 2017 was trafficking in a controlled drug at Anse Boileau, by virtue of having in his possession a controlled drug with a total net weight of 3.9 grams with a heroin content of 2.30 grams which gives rise to a rebuttable presumption of having possession of the said drugs for the purpose of trafficking.

#### Count 2

#### Statement of Offence

Possession of a controlled drug contrary to and punishable under section 8(1) as read with the Second Schedule of the Misuse of Drugs Act 2016

#### Particulars of Offence

Michael Andrew Jean, holding NIN 976-0963-1-1-15 and a resident of Corgate Estate, Mont Fleuri, on the 21<sup>st</sup> August 2017 was found in possession of of a controlled drug namely 0.30 grams grams of cannabis (herbal materials) with the intention to traffic.

- [2] Counsel for the Prosecution related the facts of a charges and were accepted by the accused. Basically, on 21<sup>st</sup> August 2017 two agents of the ANB were conducting mobile patrol in the Anse Boileau vicinity. When the officers approached near the residence of the accused, they noticed a man running towards the back of the house. The accused was apprehended while doing so the accused dropped 2 pieces of cling film to the ground. They were picked up and opened in the presence of the accused. One of the cling film contained 4 blue plastics which contained heroin. The other piece of cling film contained white paper and herbal materials which was cannabis. the Officers also found SR1,892.00 on the accused and that was seized.

- [3] In mitigation, Counsel for the accused pleaded for leniency. She stated that the accused is 44 years old and has a 14 year old child that he was maintaining but that since he has stopped working he cannot maintain the child. He suffers from tuberculosis. Counsel produced a medical report which unfortunately does not state the ailments from which the accused suffers, save to state that he was hospitalised from 09<sup>th</sup> March 2020 to 23<sup>rd</sup> March 2020. He is a drug dependent person and has been on the methadone programme managed by APDAR. Counsel produced an email from APDAR which confirms that he enrolled on that programme on 06<sup>th</sup> October 2020
- [4] I have taken all matters in mitigation into consideration. I note that the accused is a first time offender. The early guilty plea should earn him credit as far as sentence is concerned. The guilty plea is an indication that the accused expresses remorse for the crime committed. I, nonetheless note that the maximum penalty for trafficking is life imprisonment and/ a fine of SR750,000.00 and an indicative minimum sentence where the offence is aggravated is 20 years. In this case, the offence was not aggravated. The adopted sentencing guidelines for a quantity of between 2 and 10 grams of heroin is 2 to 5 years imprisonment. Possession of 0.30 grams of cannabis is considered negligible and would not fetch any prison sentence.
- [5] However, considering all the mitigating factors particularly the guilty plea, the fact that the accused is a drug dependent person undergoing the methadone programme and that he suffers from tuberculosis which can be contagious, I feel that a non-custodial sentence will be the most appropriate in the circumstances.
- [6] I hereby sentence the accused as follows;
- Count 1 to a term of 2 years imprisonment suspended for 2 years and a fine of SR7000/- payable on or before the 31<sup>st</sup> January 2021 and in default to a term of 3 months imprisonment.
- Count 2 to 1 month imprisonment suspended for 3 months.
- [7] The accused has a right of appeal against both conviction and sentence within 30 working days from today.

Signed, dated and delivered at Ile du Port on 22<sup>nd</sup> October 2020

  
Vidot J

