

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 874
CO59/2019

In the matter between:

THE REPUBLIC
(rep. by *Ananth Subramanian*)

Republic

and

EDDY NIGEL ESTHER
(rep. by *Joel Camille*)

Accused

Neutral Citation: *Republic v Esther* (CO 59/2019) [2020] SCSC 874 (20th November 2020)

Before: Burhan J

Heard: 09th November 2020

Delivered: 20th November 2020

ORDER

Convict Eddy Esther sentenced to term of one year imprisonment and a fine of SCR 10,000/= (ten thousand). In default of payment of fine the convict is sentenced to a term of 6 months imprisonment. However as the convict is exhibiting a positive attitude to rehabilitating himself on condition that the convict attends a rehabilitation program at APDAR for a continuous period of 1 year from the date hereof i.e. 20th November 2020, I will proceed to suspend the one year term of imprisonment imposed for a period of one year. The suspended term is therefore imposed subject to the aforementioned condition under section 282 (3) if the Criminal Procedure Code.

The probation office is report to court on the next date whether the convict has enrolled himself in an APDAR rehabilitation program and the probation office is to monitor the convict Eddy Esther during this period of one year. If the convict fails to attend the

rehabilitation program, the probation officer is to immediately report this fact to this court for steps to be taken under section 283 (1) of the Criminal Procedure Code.

SENTENCE

BURHAN J

[1] The convict Eddy Esther is charged with the following offence:

Count 1

Trafficking in a Controlled Drug by means of being found in unlawful possession of a controlled drug with intent to traffic, contrary to Section 9(1) of the Misuse of Drugs Act 2016 read with section 19(1) (c) of the said Act and punishable under section read 7 (1) read with the Second Schedule of the said Act. The controlled drug is 7.52 grams of heroin (pure quantity 2.03 grams).

[2] The convict pleaded guilty to the said charges without proceeding to trial.

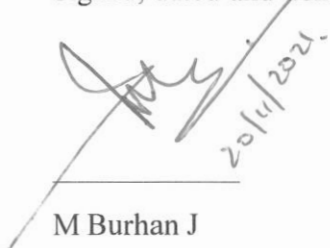
[3] In mitigation learned Counsel Mr. Joel Camille on behalf of the convict submitted that the convict had pleaded guilty thereby saving the precious time of court and its resources. Learned Counsel further submitted that his client was a first offender and shown remorse as borne out by the probation report. He further submitted that the convict was a first offender who had been sentenced to imprisonment for a non-drug related offence but during his stay in the prison, due to depression, had developed an addiction to controlled drugs. It is apparent from the probation report filed that the convict is now attempting to fight the addiction as he has been made aware by the probation officer of the dangers, negative effects and health hazards of such addiction.

- [4] It is also reported in the probation report that despite a troubled childhood due to the ill treatment the convict at the hands of his step-father, he has progressed in life and is now gainfully employed as he has set up a small business in the field of construction and rock blasting which he is managing upto date successfully and which provides work to others as well. His partner too has referred to him as a hard working person who has his family at heart and is a good father and industrious person. She also refers to the convict's tough childhood and the fact he had been severely mistreated and abused by his stepfather but despite this the convict cared for her and the children a lot. The probation report recommends that the convict be given a suspended sentence. Learned Counsel Mr. Camille moved that the convict be given a non-custodial sentence, giving due consideration to the facts set out in the probation report.
- [5] I have considered the plea in mitigation and the facts contained in the probation report. The convict is a first offender aged 38 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. The convict it appears has developed an addiction to controlled drugs whilst serving a jail term for a non – controlled drug related offence. It appears that he is gainfully employed and being a good partner and father to his family since then. His successful business enterprise also employs other persons who are dependent on it for an income. He also undertakes to reform himself if given a chance. I also observe that the quantity of Class A controlled drug is just over the threshold of 2 grams and not of commercial quantity. I am inclined not to impose an immediate custodial term on the convict.
- [6] The recommended sentence for such an offence is a maximum of two to five years and a fine. As the convict has pleaded guilty, he is entitled to a discount on the said sentence.
- [7] Having thus considered all the aforementioned factors in mitigation, I proceed to sentence the convict Eddy Esther to term of one year imprisonment and a fine of SCR 10,000/= (ten thousand). In default of payment of fine, the convict is sentenced to a term of 6 months imprisonment. However as the convict is exhibiting a positive attitude to rehabilitating himself on the condition that the convict attends a rehabilitation program at APDAR for a continuous period of 1 year from the date hereof i.e. 20th November 2020, I will proceed

to suspend the one year term of imprisonment imposed for a period of one year. The suspended term is therefore imposed subject to the aforementioned condition under section 282 (3) if the Criminal Procedure Code.

- [8] The probation office is to report to court on the next date whether the convict has enrolled himself in an APDAR (Agency for the Prevention of Drug Abuse and Rehabilitation). rehabilitation program for a period of one year and the probation office is to monitor the convict Eddy Esther during this period of one year. If the convict fails to attend the rehabilitation program, the probation officer is to immediately report this fact to this court for steps to be taken under section 283 (1) of the Criminal Procedure Code.
- [9] Copy of this order to be served on the probation office. Further probation report is called on the next date in respect of producing details of the APDAR program to which the convict has enrolled himself.
- [10] Nature of a suspended term explained to the convict. Convict to pay fine by next date and be present in court on the said date i.e. the 18th of January 2021.

Signed, dated and delivered at Ile du Port on 20th November 2020.



M Burhan J