

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 974
CO19/2020

In the matter between:

THE REPUBLIC
(rep. by Ananth Subramanian)

Republic

and

MICHEL ALAN ROMANO LESPOIR
(rep. by Joel Camille)

Accused

Neutral Citation: *R v Lespoir* (CO 19/2020) [2020] SCSC 974 (22 December 2020).

Before: Burhan J

Heard: 11th December 2020

Delivered: 22 December 2020

ORDER

The convict is sentenced to a term of twelve months imprisonment. Time spent in remand to count towards sentence. Whilst serving this term of imprisonment, the convict is to attend a rehabilitation program as determined by the prison authorities in collaboration with the Agency for Prevention of Drug Abuse and Rehabilitation. (APDAR).

SENTENCE

BURHAN J

[1] The convict Michel Lespoir pleaded guilty to the following charge:

Count 2

Possession of a controlled drug contrary to Section 8 of the Misuse of Drugs Act, 2016 and punishable under the Second Schedule of the said Act.

The controlled drug detected as borne out in the particulars of offence is 45.30 grams of Heroin having a purity content of 9.06 grams. The detection occurred on the 11 March 2020.

- [2] The convict pleaded guilty to the aforementioned charge. At the request of his learned Counsel Mr. Joel Camille a probation report was called. The facts set out in the probation report are that the convict is 26 years of age. After completing his primary education he had joined the School of Maritime Studies, where he followed a certificate course in fisheries technology. He has worked as a boat boy at Ephelia Resort, a porter with Air Seychelles and a meter reader at PUC on an unemployment relief scheme program. The convict however denies trafficking in controlled drug Heroin or that he is an addict to it but admits he is dependent on Cannabis and Hashish since the age of 16. Both the convict and his mother in their interviews with the probation moved court that a non- custodial sentence be imposed on the convict. The probation recommends a suspended sentence and fine on the convict. It would be pertinent at this stage to set out that for possession/trafficking of a quantity of controlled drug the recommended sentence is 2 to 5 years.
- [3] Learned Counsel Mr. Camille in mitigation submitted that the convict has saved the precious time of Court by pleading guilty at the outset of the case. Learned Counsel moved for a suspended sentence to be imposed on the convict as he has shown remorse and regret at the incident and as the quantity of controlled drug found was on the low side and as he is a first offender. He further submitted that under section 39 of the Misuse of Drugs Act (MODA) the court had a discretion not to consider imposing a term of imprisonment for offences of possession unless the court considers there is no reasonable alternative but to do so.

- [4] No doubt the convict has pleaded guilty to the lesser charge of possession of a controlled drug but the drug concerned is a Class A drug and the quantity of net weight heroin is 45.30 and pure heroin is 9.6 grams which is high. The cases referred to by learned Counsel for the convict namely **R v Samson [2020] SCSC 501** the net quantity was 3.50 grams of heroin with a pure quantity is 2.07 grams. In the case of **R v Vital [2020] SCSC 183** the net quantity was 14.25 grams of heroin with a pure quantity of 8.69, while in the case of **R v Denise [2020] SCSC 477** the net quantity was 9.35 grams of heroin with a pure quantity of 4.20 grams. In this instant case the net weight is the largest 45.30 grams of heroin and pure quantity 9.06 grams also is the largest. I am of the view that a non-custodial sentence is inappropriate considering the circumstances of this case and I am of the view that for the convict in this case who admittedly is a drug dependent person since the age of 16 rehabilitation whilst in prison is the best alternative.
- [5] Further considering the fact that the quantity is larger than those which suspended sentences have been given, I proceed to sentence the convict to a term of twelve months imprisonment. Time spent in remand to count towards sentence. Whilst serving this term of imprisonment, the convict is to attend a rehabilitation program as determined by the prison authorities in collaboration with the Agency for Prevention of Drug Abuse and Rehabilitation. (APDAR).

Signed, dated and delivered at Ile du Port on 22 December 2020.

M Burhan J