

SUPREME COURT OF SEYCHELLES

Reportable
[2023]
CO35/2022

In the matter between

THE REPUBLIC
(represented by Mrs. Naidu)

REPUBLIC

And

RAPHAEL PIERRE LOUIS
(represented by Mr. Hoareau)

1ST ACCUSED

DWAIN WILLIAM
(represented by Mr. Juliette)

2ND ACCUSED

Neutral Citation: *Republic vs Pierre Louis & Or (CO35/2022) [2023]*

Before: D. Esparon J

Heard:

Delivered: 19th October 2023

SENTENCE

D. ESPARON J.

Introduction

[1] The accused has been charged with the offence of possession of a controlled drug contrary to section 8(1) of the Misuse of drugs Act read with section 20(1) (a) of the same Act. The particulars of the offence are as follows ;

‘Raphael Pierre, 20 years old, an accountant at Foret Noire, Mont Fleuri, Mahe on the 3rd August 2022 at Foret Noir, Mont Fleuri was in possession of a controlled drug namely Heroin (diamorphine) with a net weight of 100.31 grams with heroin (diamorphine) content of 60.18 grams’.

- [2] The accused has been convicted on his own guilty plea after having admitted the facts of the prosecution case.
- [3] During mitigation Counsel for the accused put forth in mitigation that the accused is a young man of 21 years old and is presently a part time student at the Guy morel institute of which he already has a diploma in accounting and working as a boarding officer at Hunt Deltel and that since he is following a career a prison sentence will not do justice to him. Furthermore the accused is a first time offender and in fact he had cooperated with the police leading to the arrest of the 3rd accused person. According to counsel had he not cooperated there would have not been any case against him. He has also signed a plea bargaining agreement with the Attorney General and as such he has accepted to be a witness in the case against Dwain William. That there is an absence of commercial element in the case and that there was an element of deceit from a friend which led to the commission of the offence.
- [4] Counsel further submitted that the accused had pleaded guilty at an early stage in the proceedings to the offence showing remorse and saving the precious time of the Court and that the accused is a person of good character.
- [5] Counsel submitted to the Court that there is a maximum sentence of 15 years imprisonment with a fine of SR 300,000 for the offence with no indicative minimum sentence of which there is no aggravating factors in the commission of the offence. Counsel urged the Court to impose a non-custodial sentence. Counsel for the accused relied on the case of the *Republic V/S Hendrick Camille* which concerned 21.90 grams of heroin of which the Court imposed a sentence of one year and six months imprisonment suspended for 2 years and a fine of 10,000 in default six months imprisonment.
- [6] Counsel also relied on the case of the *Republic V/s Dave Delpeche* of which concerned 30 grams of heroin.
- [7] The Court had requested for a probation report to be made in order to assist the Court of which such probation report which was submitted to the Court laid emphasis on the accused good character in addition to other mitigating factors put forth before the Court

by counsel for the accused. Furthermore the probation report has recommended that the Court considers a suspended sentence coupled with a fine despite recognizing the seriousness of the offence in the said report.

The Law

[8] At this stage, the Court has to draw its attention to section 47 of MODA which makes provision for the following;

“(1) in sentencing a person convicted of an offence under part of this Act, whether upon a guilty plea or following a trial, the Court shall have regard to;

(a) the objectives of the Act

(b) the degree of control to which the relevant control drug is subject; and

(c) the general objectives of transparency or 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...”

[9] Section 49 of the misuse of Drugs Act read as follows;

Mitigating factors (factors that support a reduction in sentence) for offences under this Act include;

(a) The offender’s admission of the truth of the charge through a guilty plea, particularly an early guilty plea;

(b) The offender’s acceptance of responsibility for harm or potential harm associated with his or her offence;

(c) Any substantial assistance given by the offender to law enforcement authorities, as an informer or otherwise, in prevention investigation, or prosecution of any other offence under this Act;

- (d) The absence of commercial element in the offence;
- (e) The presence of element of coercion, for example from a family member or employee;
- (f) The absence of prior convictions or prior formal cautions under this Act; and
- (g) The fact that no other person was involved in or directly harmed by the offence.

[10] This Court also draws its attention to section 47(4) of the Misuse of Drugs Act which states as follows;

“In sentencing a person convicted of an offence under section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all circumstances”.

Analysis and determination

[11] From the outset this court would like to expound on the principle of sentencing as laid down in decided cases. In the case of *Ponoo V/S Attorney General (2011) SLR*, the Court of Appeal held that;

‘Sentencing is an intrinsic judicial power which involves the human deliberation of the appropriate conviction to be given to the particular offender in the circumstances of the case. It is not a mere administration of a common formula standard or remedy.’

[12] In the case of *Savy v/s R (1976) SLR 54*, the Court held that;

‘In sentencing, the Court should consider the necessity of punishing crime, the deterrent effect on others of the appropriate punishment, and the need to protect the public from offences especially in at the hands of those entrusted with the enforcement of the law, the previous good character of the accused, the motive for the offence and the loss of usefulness to the state by a prison sentence.’

- [13] In the case of *R V/S Aden (2011) SLR 41* the Court held that;
- ‘‘ In sentencing, one relevant factor is the seriousness of the offence’’
- [14] This Court has considered the above provisions of the law, the case laws cited by counsel for the accused and the mitigating factors put forth by counsel for the accused. I have considered as mitigating factors that the accused is a first time offender and has shown remorse, is of a young age 21 years of age and still following his studies at the Guy Morel institute of which he is presently in employment as a boarding officer at Hunt Deltel.
- [15] I have also taken into consideration of the accused good character as highlighted by the probation report and the fact that he had cooperated with the police leading to the arrest of the 3rd accused person. In fact had he not cooperated there would have not been any case against him since the drugs were found outside. He has also signed a plea bargaining agreement with the Attorney General and as such he has accepted to be a witness in the case against Dwain William. This Court also takes note that there is no aggravating factor present in the instant case relating to the commission of the offence. This Court also reminds itself that offence of which the accused has been convicted is one of possession of a control drug rather than one of trafficking in a controlled drug. Furthermore this Court has perused the proceedings in the matter and has found that the accused has not objected to the forfeiture of cash seized amounting to SCR 61,775.
- [16] This Court is of the view that all of these mitigating factors referred to above taken together are strong mitigating factors or circumstances of which this Court has to give careful consideration. This Court agrees with the submissions of learned counsel for the accused that section 49 does not give an exhaustive list of mitigating factors which the Court should consider since the word include is used in the said provision.
- [17] As to the submission of learned Counsel for the accused that the Court should also take into consideration the fact that there was deceit employed by a friend of the accused on the said accused which led to the accused committing the offence, this Court has gone through the record of proceedings in the matter and takes note that this was not part of the

admitted facts by the accused as laid down by the prosecution and as such this Court would not be able to take this into consideration as a mitigating factor in favour of the accused.

[18] This Court has also considered the cases cited by counsel for the accused and finds that although they offer some guidance to the Court, they do not go as far as the court imposing a suspended sentence for an offence of possession with intent to traffic in a control drug or of possession of a controlled drug whereby the Court has imposed a suspended sentence on an accused having in his possession a controlled drug of a class A drug of an amount more than 20 grams. In the case of *R V Dhalin Joubert CR 70 of 2021*, the Court imposed a term of 1 year and 6 months imprisonment suspended for 2 years in a matter relating to an offence of Trafficking in a controlled drug involving a net weigh 40.25 grams with a cocaine content of 26.16 gram with no aggravating factors present in the matter.

[19] This Court takes note that in the present case it concerns a class A drug containing 60.8 grams of heroin (diamorphine)

[20] In view of this, this Court finds that although there are strong mitigating factors present in the case, this Court is of the view that the offence is a serious one carrying a maximum sentence of 15 years imprisonment and a fine of SCR 300,000. Furthermore the amount of controlled drug which was found in possession of the accused was quite on the high side namely 60.18 grams of heroin (diamorphine) compared to the above cited cases.

[21] In view of the above, I am of the view that a custodial sentence will be the most appropriate in the circumstances. I accordingly impose a sentence of 9 months imprisonment on the accused Raphael Pierre-Louis. Since there is no aggravating factor present in the instant matter, the accused may be entitled to remission in accordance with the law.

Signed, dated and delivered at Ile du Port on 19th October 2023

D. ESPARON, J