

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 114

CO 64/2019

REPUBLIC

(rep. by Joshua Revera)

Prosecution

And

STANIO FRANCOISE

(rep. by Nichol Gabriel)

Accused

Neutral Citation *R v Francoise* (CO 64/2019) [2021] SCSC 114 (01st April 2021)

Summary Possession with intent to traffic in a control drug, namely heroin contrary to section 9(1) and punishable under section 7(1) of MODA 2016

Before: Vidot J

Heard: 12th October 2020 and 6th November 2020

Delivered: 1st April 2021

SENTENCE

VIDOT J

[1] Stanio Francoise is charged with one count of possession with intent to traffic in a controlled drug, namely heroin contrary to section 9(1) and punishable to section 7 (1) of the said Misuse of Drugs Act. The particulars of the offence are that the Accused who is a resident of Mont Buxton, Mahe, on 27th April 2019 at Mont Buxton, Mahe was found in unlawful possession of a controlled drug having a net weight of 23.9 grams of heroin containing 5.28 grams of pure heroin (Diamorphine) with intent to traffic the said controlled drug.

- [2] The Accused requested that the Court calls for a probation report before passing sentence. The court is in receipt of the report and a copy was served and acknowledged by the Accused. This Court shall give full and due consideration to that report when meting out sentence. The Accused made a brief submission in mitigation alluding to the fact that his girlfriend had recently given birth to their first child and he is the sole provider for his child and girlfriend. He regrets having committed the offence and he prays for leniency from Court.
- [3] The Accused who is a first time offender decided to plead guilty after the trial had started and when the Prosecution was nearing the end of its case. The Accused was initially being represented by Mr. Nichol Gabriel but at the time he decided to plead guilty Mr. Gabriel had stopped representing him. In fact the in the report the Accused explained that he wanted to plead guilty at the very start of the trial but that his then Counsel had insisted that he pleads not guilty. I call upon Counsels though they are best placed to advise and represent their clients, they equally need to study the case file and listen to the clients.
- [4] The Accused is 20 years of age and a first time offender. As per the report he states that he had some scooter spare parts that he wanted to sell as he was facing some financial difficulties. The buyer of these spare parts rather than paying him in cash gave him some heroin to sell instead. He took the heroin and kept it at his house where it was discovered by the Police.
- [5] The Accused begs for leniency from the Court. He pleaded guilty thus showing remorse albeit that the guilty plea came late during the trial. He pleads for the possibility of staying with his girlfriend and infant in order to support them
- [6] A guilty plea earns an accused credit as far as sentenced is concerned. **Blackstone's Criminal Practice (2012), paragraph E.12 p2148**, states that a guilty plea would in effect earn an accused a reduction in sentence as it saves time of the court and reduces considerable cost and in case of an early plea, also saves inconvenience of victims and witnesses to give evidence before court, and furthermore that a "*reduction should be a proportion to the total sentence imposed calculated by reference to the circumstances in*

which the guilty plea was indicated, in particular at what stage in the proceedings” I take that into consideration when passing sentence.

- [7] However, the court sentencing guidelines for such an offence is between 2 to 5 years imprisonment. This means that the offence is seen with some degree of severity. I note that as a young man, it is easy to fall prey of being involved in drugs. Influence and temptation in drugs related activities are quite strong out there and requires a certain amount of resilience from the youth. I am very much alive to the necessity for the girlfriend and the infant to have the Accused present in their lives at this point in time. I believe that that was a major factor why the probation officer who prepared the report recommended a non-custodial sentence in this case. Nonetheless, I have to take into account the quantity of heroin involved and the fact that the Accused accepted that as payment for his spare parts and he was going to sell same. By selling the drugs other people would have been affected.
- [8] If the case had gone through full trial I would have imposed a sentence of three years imprisonment. Therefore, a guilty plea will earn him credit on that sentence and this Court would have taken at least a third off from that sentence. However, I also remain aware that at the moment the country is dealing with challenging health and economic problems caused by the Covid-19 pandemic and I shall also be considering these when imposing sentence
- [9] Therefore, in the circumstances I sentenced the Accused to 9 months imprisonment and to a fine of SR4,000 which fine shall become due and payable 5 months from his release from prison and in default of which the Accused shall serve a prison term of 2 months.
- [10] If unsatisfied with this sentence the Accused may appeal against the same within 30 working days from today.

Signed, dated and delivered at Ile du Port/ Victoria on 01st April 2021

M Vidot J