

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 110
CO 89/2019

In the matter between:

THE REPUBLIC
(rep. by Corrine Rose)

Republic

and

DAMIEN DARNLEY ROSE
(rep. by Basil Hoareau)

Accused

Neutral Citation: *R v Rose* (CO 89/2019) [2021] SCSC 110 (7 April 2021)
Before: Burhan J
Heard: 24 March 2021
Delivered: 07 April 2021

ORDER

I proceed to sentence the convict to a term of 6 months imprisonment which I suspend for a period of two years. I also impose a fine of SCR 10,000 (ten thousand). In default of payment of fine a term of 6 months imprisonment to be imposed on the convict.

SENTENCE

BURHAN J

[1] The convict Damien Rose was convicted on his own plea of guilt for the following offence:

Count 1

Trafficking in a controlled drug, having been found in unlawful possession of a controlled drug with intent to traffic, contrary to Section 9 (1) as read with Section 19 (1) (d) (i) 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, 2016.

The controlled drug detected as borne out in the particulars of offence was Cannabis Herbal with a net weight of 352.9 grams. The detection occurred on the 5th of November 2018.

[2] At the request of his learned Counsel Mr. Basil Hoareau a probation report was called. The facts set out in the probation report are that the convict is 26 years of age. The convict had completed his primary and secondary education. He has been employed as a general helper at Sodepac for five years and then a driver at Val Riche. The report further confirms the fact that he is a first offender. It appears he has started work at a very young age to support his mother. His mother confirms this fact and states the convict her son is a calm, hardworking person who always showed her respect as a mother. The convict has tested positive for Cannabis on the 7th of December 2020, indicating he is a user of controlled drug Cannabis as well.

[3] Learned Counsel Mr. Hoareau in mitigation submitted that the convict has saved the precious time of court by pleading guilty at the outset of the case and by doing so, he has expressed remorse and regret at the incident. Learned Counsel moved for a suspended sentence to be imposed on the convict. Learned Counsel also brought to the notice of court that the convict was a first offender. He also submitted that the charge was possession with intent to traffic which was not as serious as trafficking by way of the definition contained in section 2 of the Misuse of Drugs Act 2016. He tendered to court several cases where suspended sentences were imposed namely **R v Mickey Zelia [2019] SCSC 1043**, **R v Fred [2020] SCSC 720**, **R v Hoareau [2020] SCSC 544**. He further

submitted that the quantity was not a commercial quantity and there were no aggravating circumstances in the case.

- [4] It would be pertinent at this stage to set out that for possession/trafficking of this quantity of Class B controlled drug, the recommended sentence is a custodial sentence of up to a maximum 2 years imprisonment and fine. The probation report recommends a suspended sentence and fine on the convict. I also observe that had the quantity been less than 250 grams, the recommended sentence would have been a suspended term. However the quantity 352. 59 far exceeds this amount and therefore warrants the imposition of a custodial term as per the recommended sentences.
- [5] However, I observe a material fact in the charge sheet and that is the date of offence mentioned is 5th November 2018. Charges have been filed only on the 17th of February 2021. It is my considered view that there has been an inordinate delay in the filing of charges against the convict. The convict was arrested at the time of detection, so the delay was not due to the convict absconding. The Seychelles Court of Appeal held in the case of **Pascal Fostel v Republic 2014 SCCA 24** that inordinate delay not based on the fault of the convict, is a ground to reduce the penalty on the convict.
- [6] I am of the view that there was inordinate delay by the prosecution in the filing of charges against the convict in this case. I am satisfied that the delay was not due to the fault of the convict and the prosecution has not given a satisfactory explanation for the delay in filing charges in this case. This makes the prompt plea of guilt by the convict, a strong factor in mitigation and warrants the imposition of a suspended term of imprisonment **R v Jean Luc Marie [2020] SCSC 547 (7th August 2020)**.
- [7] I proceed to sentence the convict to a term of 6 months imprisonment which I suspend for a period of two years. I also impose a fine of SCR 10,000.00 (ten thousand). In default of payment of fine a term of 6 months imprisonment to be imposed on the convict.
- [8] Nature of suspended sentence explained to the convict. Time given for convict to pay the fine in monthly instalments of SCR 2500.

[9] Right of appeal against sentence explained

Signed, dated and delivered at Ile du Port on 07 April 2021.

M Burhan J