

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC **362**
CR 76/2020

REPUBLIC

(rep. by Aisha Molle)

Prosecution

and

IRIE BRUTUS

(rep. by Daniel Cesar)

Accused

Neutral Citation	<i>Republic v Irie Brutus</i> CR76 of 2020 [2021] SCSC 362 delivered on 28 th May 2021
Summary	Unlawful possession of controlled drug with intent to traffic
Before:	Vidot J
Heard:	01 March and 06 th April 2021
Delivered:	28th May 2021

SENTENCE

VIDOT J

- [1] The Accused stands charged of one count of 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)(c) 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.
- [2] The particulars of offence are that the Accused who is a resident of Belonie, Mahe, on the 21st December 2019, at the English River basketball court, was found in unlawful

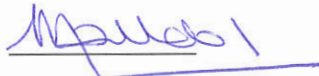
possession of a controlled drug namely heroin (diamorphine) with a net weight of 3.69 grams and a purity content of 63% heroin amounting to 2.32 grams, giving rise to a rebuttable presumption of having possession of the said controlled drug with intent to traffic.

- [3] The Accused pleaded guilty to the charge, admitted the fact as relayed by the Prosecution and was convicted accordingly.
- [4] The Accused is a first time offender and therefore requested a Probation Report ("the report" and a report from APDAR) before passing of sentence by Court. The report was received and a copy was made available to Counsel for the Accused. Despite, several attempts to get a report from APDAR, the Court received none and Counsel finally indicated that the defence will not press for it and that sentence could be delivered in the absence of such report.
- [5] In migration Counsel for the Accused relied on the report but remarked that the Accused is a first time offender who has pleaded guilty on the first given opportunity, thereby showing remorse and saving the Court's precious time. At the time of commission of the offence the Accused was only 17 years old, therefore a minor, and was a drug dependant person.
- [6] The Accused explained to the probation officer who prepared the report that the drug was for his own consumption. He was facing some unfortunate situation that he ended up being drug dependent. He faced difficulty in trying to deal with his addiction and therefore sought the assistance of APDAR for treatment against such addiction.
- [7] He started employment at a water sport and boat charter business in Beau Vallon but then moved to Hunt Deltel where he is a stevedore. His mother claims that he was a good student but that he was a nuisance and disruptive at school and that cost him his education. He was expelled from school. There was lack of communication at home that his mother was unaware that he was abusing drugs.
- [8] According to the report, APDAR has confirmed that he is an active and regular client. That demonstrates that he is willing to wean himself of his addiction. Nonetheless,

APDAR conducted a urine test on the Accused and he was tested positive for THC (cannabis) and methadone.

- [9] I shall in considering sentence give due consideration to all matters raised in mitigation and to the report.
- [10] In **Morin v R SCA Cr 11/2002 [2003]** (11th April 2003), the Court of Appeal held that the Court should, in the absence of some aggravating factors, be slow to sentence a first time offender to a term of imprisonment if the offender can be appropriately dealt with in some other way and that such will depend on the facts and gravity of each case; see **R v Tony Palmyre [2019] SCSC 1005**. There are no aggravating factors in this case.
- [11] Furthermore, in **R v Buffery 14 Cr App. R (S) 511CA**, Lord Taylor said that there was no absolute rule as to what the discount should be, but as a general guidance the Court believes that a term of the order of one third would be an appropriate discount. Blackstone's Criminal Practice (2012) paragraph E.12 P2148, provided that a guilty plea would in effect earn the accused in sentence as it saves time of the court and reduces considerable cost and in case of an early plea saves inconvenience of witnesses to give evidence before court, and therefore that *"reduction should be appropriate to the total sentence imposed calculated by references in which the guilty plea was indicated, especially at what stage in the proceedings"*.
- [12] I note the young age of the Accused and the fact that he has been trying to wean himself of his addiction to heroin and that he is following treatment with APDAR. I take note of his guilty plea that came at a very early stage in the case. I believe he deserves a second chance in life. For an offence of such nature, the sentencing guidelines of the Court provides for a sentence between 2 and 5 years. However, due to the ongoing covid-19 pandemic and the current situation in Seychelles which I consider serious, there is also a need not to overcrowd the prison.
- [13] In these circumstances I sentence the Accused to a term of 2 years of imprisonment suspended for 2 years and to a fine of SR8,000.00 which sum must be paid in full by 31st August 2021 and in default to a term of 6 months imprisonment

Signed, dated and delivered at Ile du Port on 28th May 2021

A handwritten signature in blue ink, appearing to be 'M Vidot J', written over a horizontal line.

M Vidot J