

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 457
CO24/2019

In the matter between:

THE REPUBLIC

(rep. by Joshua Revera)

Republic

and

JAPHNA AGRICOLE

(rep. by Edith Wong)

Accused

Neutral Citation: *Republic v Agricole* (CO 24/2019) [2021] SCSC 457 (26th July 2021)

Before: Burhan J

Heard: 12th July 2021

Delivered: 26th July 2021

ORDER

The accused Japhna Agricole is sentenced as follows:

Count 1 – A term of four years imprisonment.

Count 2 - A term of four years imprisonment.

Both terms of imprisonment to run concurrently.

SENTENCE

BURHAN J

[1] The accused Japhna Agricole has been charged with the following offences:

Count 1

Importing a controlled drug contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule of the said Act.

Japhna Agricole of Anse Aux Pins Mahe, on the 23rd December 2018, at the International Airport, Pointe Larue, Mahe, was found importing into Seychelles a controlled drug namely 20.3 grams of Heroin (Diamorphine) with a purity of 48% amounting to 9.74grams of Heroin (Diamorphine).

Count 2

Escape from lawful custody contrary to Section 116 (1) of the Penal Code Cap 158.

Japhna Agricole of Anse Aux Pins, Mahe, on the 23rd of December 2018, at the International Airport, Pointe Larue, Mahe, whilst being in lawful custody of the Police Officer Kathleen Belle, escaped from her custody.

- [2] On the 14th of June 2021, the accused was found guilty after trial and convicted on both Counts.
- [3] A probation report was called prior to the plea in mitigation. Thereafter learned Counsel Ms Edith Wong made a plea in mitigation on behalf of the accused.
- [4] I will first deal with the facts set out in the probation report. The accused is 28 years old. The accused was not in any permanent employment at the time of her arrest. It appears from the report that she has been brought up by her father from the age of 7 years as her mother had left to Bahrain for employment. Her father had failed to take proper care of her as he was involved in substance abuse. When she was 11 years old the Social Services had intervened and kept her in a Half –Way Home. It appears she has also run away and absconded from the Half – Way home on several occasions. Her mother had returned when

she was fifteen years but there had been very little communication between them. The probation recommends that in considering sentence the court considers the difficult circumstances and challenges the accused had gone through in her childhood days. It is recommended that court also considers the fact that the controlled drug was taken into custody by the police thereby not affecting the community and the fact she is a first offender when passing sentence.

[5] In mitigation learned Counsel Ms Edith Wong for the accused submitted that the sentencing trend of courts for the offence of Importation of a controlled drug was in the range of eight to ten years imprisonment. She referred to several cases **Republic v Osama Cassim and Anr CO 72/2017**, **Republic v Francis Ernests & Ors CO22/2016** and **Republic v Jerry Lenclume. CO 58/2019**. Learned Counsel further submitted that the accused is a first offender and considering the quantity of controlled drug taken into custody it was not for commercial purposes. In respect of the 2nd Count she submitted that even though the minimum mandatory was 5 years there have been instances where courts have given less than five years. She moved for leniency in sentencing based on these facts.

[6] I have given consideration to the facts contained in the probation report and the plea of mitigation made by learned Counsel. The charge of Importation of a controlled drug is a very serious charge. Learned Counsel for the accused has correctly set out the range of sentences given by the Supreme Court of Seychelles for such an offence which sentences in the Osama Cassim and Ernesta cases (supra) have been upheld by the Seychelles Court of Appeal and the Lenclume case (supra) remains to be determined pending appeal.. However in this instant case, the pure quantity concerned is only 9.74 grams very much less than the quantities in the cases referred to by learned Counsel. I am therefore of the view that a lesser sentence must be imposed given that the quantity imported was not for commercial purposes but for her personal usage as she admits she is a drug user. However it appears that due to her escape after arrest from the officers of the ANB (Anti- Narcotics Bureau) the Officers had not been able to get her medically checked in the hospital to verify whether she had controlled drugs in her person when she entered Seychelles. Be that as it may, this court at present can only take the quantity taken into custody into consideration.

[7] Having considered all the aforementioned facts including the facts set out in the probation report and plea in mitigation, I proceed to sentence the accused as follows:

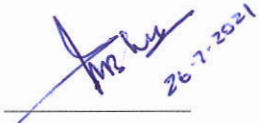
Count 1 – A term of four years imprisonment.

Count 2- A term of four years imprisonment.

Both terms of imprisonment to run concurrently.

[8] Time spent in remand to count towards sentence. Right of Appeal explained.

Signed, dated and delivered at Ile du Port on 26th day of July 2021.

A handwritten signature in blue ink, appearing to read 'M Burhan J', is written over a horizontal line. To the right of the signature, the date '26-7-2021' is written in blue ink.

M Burhan J