

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 186

CO93/2021

In the matter between:

THE REPUBLIC

Prosecution

(Represented by Ms Monthy)

And

Jeffrey Monthy

Accused

(Present/Represented by Mr. Olivier Changleng)

Neutral Citation: *The Republic v Jeffrey Monthy*(CO93/2021) [2022] SCSC

Before: B. Adeline, J

Summary: Possession with Intent to Traffic in a Controlled Drug – Accused pleaded guilty, and given suspended sentence and a fine.

Heard: 10 February 2022

Delivered: 3 March 2022

FINAL ORDER

Accused charged with one single count of Possession with Intent to Traffic in a Controlled Drug, namely Heroin – Offence committed in contravention of Section 9(1) of the Misuse of Drugs Act, 2016 – Accused changed initial plea of not guilty to a guilty plea – Accused convicted and sentenced to a term of 1 year imprisonment suspended for two years, and a fine

of SCR10,000 to be fully paid by the latest 30th August 2022, in default of which he shall serve a term of imprisonment of six months.

SENTENCE

Adeline, J

[1] The accused, one Jeffrey Monthy of Anse Etoile, Mahe, Seychelles was charged before this Court with one count of the following offence;

“Possession with Intent to Traffic in a Controlled Drug namely Heroin contrary to Section 9(1) of the Misuse of drugs Act, 2016 and punishable under Section 7(1) of the Misuse of Drugs Act, 2016.

[2] The particulars of the offence in the charge sheet pertaining to NDEA - CB, NO:339/20 dated 17th September, 2021 reads as follows;

“Jeffrey Monthy of Anse Etoile, Mahe on the 11th July 2020 at La Gogue, Anse Etoile, Mahe was found in unlawful possession of a controlled drug having a net weight of 3.49 grams of heroin substance containing 2.12 grams of pure heroin (Diamorphine) with intent to traffic contrary to law committed the offence of trafficking”.

[3] The accused initially pleaded not guilty to the charge, and on the day the trial was about to commence on the 10th February 2022, he changed his not guilty plea to a guilty plea. After he admitted the facts pertaining to the offence of which he had been charged as narrated by the prosecution that led to his arrest and indictment for the offence, the accused was accordingly convicted.

[4] The facts pertaining to the arrest and indictment of the accused, are that, on the 11th July, 2020 at Anse Etoile, Mahe at approximately 9pm, Anti Narcotic Bureau Officers (hereinafter referred to as “ANB”) who had received credible information that the accused, Jeffrey Monthy, was engaging in illegal drug transactions, arrived at the residence of one Marguerite Estrale.

- [5] Once they were there, the officers knocked on the door calling that it be opened as they were ANB officers. The accused opened the door following which the ANB officers introduced themselves to him. As they walked inside the house, ANB officers found three other persons, namely, one Marguerite Estrale, Tania, Joan Andre and Nathan Andre.
- [6] Officer Herminie informed all of them that a search for controlled drugs would be conducted around the house as well as a body search of all those who were present in the house. Before the search started, all those present in the house were asked by officer Herminie whether there were drugs or large sum of money in the house or in their possession.
- [7] Neither of them who were there present replied. The search started in the presence of other ANB officers as well as the accused, searching underneath the living room carpet. Officer Herminie removed a packet of cling film underneath the carpet which he opened in the presence of the accused. Officer Herminie found a clear plastic containing substances suspected to be controlled drugs, namely heroin.
- [8] At around 9.15pm, the accused was arrested and cautioned by officer Herminie for the offence of Possession of Controlled dDugs. Officer Herminie then proceeded to search inside the bedroom that was being occupied by the accused. There, he found in the wardrobe, a black digital scale. The accused was again told that he was under arrest, and was then taken to the ANB headquarters to complete other formalities.
- [9] An analysis of the drugs was carried out and found to have a net weight of 3.49 grams of illicit heroin containing 2.12 grams of pure Heroin (Diamorphine).

[10] To decide the sentence that will do justice in this case, I have given particular consideration to the punitive objective of sentencing, and considered the following factors, notably;

- (i) The circumstances of the accused now a convict.
- (ii) The nature of the offence including the gravity and extent thereof, whilst identifying the objective seriousness of the offence.
- (iii) The interest of the community and
- (iv) The relevant sentencing legislation, guidelines and case law.

[11] Within the background of these considerations, the Court is mindful of the traditional purpose of punishment which in **Lawrence & Anor v The Republic [1990] SLR**, the Court reminded us all. They are deterrence, prevention, retribution and rehabilitation. The Court adds denunciation to the list. Deterrence from the point of view that the sentence to be imposed is one that should deter the accused from repeating similar offence, as well as others who may be tempted to do so. Retribution from the point of view that the convict ought to suffer the punishment he deserves and denunciation from the point of view that this is achieved by the imposition of a sentence, the severity of which makes a statement, that the offence in question is not to be tolerated by the society we live in.

1. The circumstances of the accused now a convict.

[12] In plea mitigation, learned defence counsel submitted, that the convict is a 43-year-old man who works as a casual worker. He is a father of two children one of whom is a minor. He pays child maintenance to support the child financially. Learned defence counsel also submitted, that although the accused did not plead guilty at the first available opportunity, his plea of guilty, means that he is remorseful and that he wanted to save the Court's time by not allowing the case to go to a trial, as well as the time of the witnesses who would have testified before the Court had the trial proceeded. Learned counsel submitted, that at the time he committed the offence, the accused was

a drugs dependent person. He urged the Court to take these matters into account and to give the accused the credit he deserves.

2. Nature of the offence including the gravity and extent

- [13] The offence of which the accused has been charged and convicted, although serious, is less serious than many of the drugs related offences on our statute books. Learned counsel submitted, that given that the offence carries no aggravating factors, and that the quantity of drugs is relatively low, slightly above the threshold for intention to traffic, the Court should be slow at considering a custodial sentence. Learned counsel cited the case of **Morin v the Republic SCA11 of 2002**, and urged the Court to follow the same, and to be slow and reluctant to impose a custodial sentence.

3. The interest of the community

- [14] It is an undeniable fact, that members of the general public are deeply concerned of the detrimental effects of drugs on our youths, as well as the country in general. In essence, there is a legitimate and genuine public interest in seeing that those who commits drugs related offences are brought to justice, and that they face the full force of the law.

- [15] However, in a democratic society based on the rule of law, where the constitution is the supreme law of the land, the Court cannot allow itself to lose focus on the task of delivering justice by having regards to public sentiments. Sentencing is a matter for the Court alone, and to decide on the appropriate sentence that will do justice to the case, the Court has to consider all the relevant factors needing consideration. In Rep V Rabie 1975(4) SA 855A, the Court said;

"punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances".

4. The relevant sentencing legislation, guidelines and case law.

- [16] The offence of which the accused has been convicted is punishable under Section 7(1) and the 2nd Schedule of the Misuse of Drugs Act 2016. The relevant provisions of Section 7(1) of the Misuse of Drugs Act, 2016 reads;

"7(1) A person who traffics in any quantity of a controlled drug, whether on his or her own behalf or on behalf of another person, whether the other person is in Seychelles or not in contravention of this Act, commits an offence of trafficking and is liable on conviction to the penalty specified in the Second schedule".

[17] As per the sentencing guidelines for drugs related offences, an accused convicted for Possession with Intent to Traffic in a Controlled Drug, Heroin contrary to Section 9(1) of the Misuse of Drugs Act, 2016 with a purity of up to 2 grams is liable to serve a term of imprisonment of up to two years and a fine. In the instant case, the accused had in his possession with intent to traffic 2.12 grams of heroin, slightly above the 2 grams threshold.

[18] I have taken a myriad of competing factors into account in meting out the right and appropriate sentence that the accused deserves, and that will do justice in this case, notably, the principles of sentencing, vide, and the idea that punishment should fit the crime when considering the principle of proportionality. I have also given particular consideration to the matters raised by learned defence counsel in plea mitigation, particularly, the fact that the accused, now a convict, has pleaded guilty and in doing so, saved the Court's precious time, the fact that he is a first time offender who has shown remorse for the crime he has committed, and his personal and family circumstances as a whole. In essence, in balancing the mitigating factors against the aggravating factors, which on the facts of this case there is none of the latter, there are good reasons for the accused to be given the credits he deserves being called for by learned defence counsel.

[19] To ensure some degree of consistency, the case of Republic V Pamela Emee Cadeau CR70/2020 and Republic v Nathalie Andy CR91/2020 have been the point of references. I therefore sentence the accused, now a convict, to a term of imprisonment of 1 year suspended for two years on condition that he is not convicted of any drugs related offences during the two years. I also sentence the convict to pay a fine of SCR10,000/- which fine must be fully paid on or before the 30th August 2022. In

default of payment of the fine so imposed, the convict shall serve a term of imprisonment of six months.

Signed, dated and delivered at Ile Du Port on the 3 March 2022.

B Adeline

Judge of the Supreme Court