

**IN THE SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2022] SCSC ...  
CR70 /2021

In the matter between

**THE REPUBLIC**  
*(rep. by Langsinglu Rongmei)*

**Prosecution**

and

**DHALIN JOUBERT**  
*(rep. by Joel Camille)*

**1<sup>st</sup> Accused**

**MARVIN JIMMY JOUBERT**  
*(rep. by Joel Camille)*

**2<sup>nd</sup> Accused**

**ALEX CECILE**  
*(rep. by Basil Hoareau)*

**3<sup>rd</sup> Accused**

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**Neutral Citation** *The Republic v Dhalin Joubert & Ors* (CR70/2021) SCSC..... delivered on 14 July 2022  
**Before:** Vidot J  
**Heard:** 4 & 5 July 2022  
**Delivered:** 14 July 2022

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**ORDER**

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- (i) Count 1: the 1<sup>st</sup> Accused is sentenced to 1 year and 6 months imprisonment and a fine of SR15,000/- payable within 3 months from being released from prison and in default to 4 months imprisonment ;
- (ii) Count 2: the 3<sup>rd</sup> Accused is sentenced to a term of 1 year and 6 months imprisonment suspended for 2 years and to a fine of SR21,000/- payable within 4 months hereof and in default to a term of 5 months imprisonment;
- (iii) Count 4, the 1<sup>st</sup> Accused is sentenced to a term of 2 weeks imprisonment suspended for 6 months;

- (iv) Count 5; the 2<sup>nd</sup> Accused is sentenced to a fine of SR3000/- payable within 2 months hereof and in default to a term of 1 month imprisonment;
- (v) Count 6: the 2<sup>nd</sup> Accused is sentenced to a fine of SR1200/- payable within 3 months hereof and in default to a term of 2 weeks imprisonment.
- (vi) Count 7: the 2<sup>nd</sup> Accused is sentenced to a fine of SR1200/- payable within 3 months hereof and in default to 2 weeks imprisonment

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**SENTENCE**

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**VIDOT J**

[1] The Accused stand charged with and pleaded to the following offences pertaining to controlled drugs;

Count 1

**Statement of Offence**

Trafficking in a controlled drug contrary to section 7 (1) as read with section 2 of the Misuse of Drugs Act, 2016 and punishable under section 7(1) read with the Second Schedule of the Misuse of Drugs Act, 2016.

**Particulars of offence**

Dhalin James Joubert, 27 years old, ANB Patrol Officer and a resident of Beau-Vallon, Mahe on 21<sup>st</sup> June 2021 at Beau-Vallon, Mahe was trafficking in a controlled drug by

means of selling, transporting, supplying or delivering a controlled drugs a net weigh of 40.25 grams with a cocaine content of 26.16 grams.

Count 2

**Statement of Offence**

Trafficking in a controlled drug, having been fund in unlawful possession of a controlled drug with intent to traffic, contrary to section 9 (1) read with section 19(1)(c) and further read with section 23 of the Misuse of Drugs Act, 2016 and punishable under section 7(1) read with the Second Schedule of the Misuse of Drugs Act, 2016.

**Particulars of Offence**

Alex Jimmy Cecile, a 25 years old resident of Bel Air, Mahe on 21<sup>st</sup> June 2021 at Beau-Vallon, Mahe was trafficking in a controlled drug having a net weight of 40.25 grams with a cocaine content of 26.16 grams which gives rise to the rebuttable presumption of having possession of the said controlled drug with intent to traffic.

Count 3 (in alternative to Counts 1 and 2)

**Statement of Offence**

Dhalin James Joubert, 27 years old, ANB Patrol Officer and a resident of Beau-Vallon, Mahe and Alex Jimmy Cecile, a 25 years old resident of Bel Air, Mahe on 21<sup>st</sup> June 2021 at Beau-Vallon, Mahe on 21<sup>st</sup> June 2021 agreed with one another, that a course of conduct shall be pursued which, if pursued, will necessarily amount to or involve the

commission of an offence of Trafficking in a controlled drug having net weight of 40.25 grams with a cocaine content of 26.16 grams

Count 4

**Statement of Offence**

Possession of a controlled drug contrary to and punishable under section 8(1) as read with the Second Schedule of the Misuse of Drugs Act, 2016

**Particulars of Offence**

Dhalin James Joubert, 27 years old, ANB Patrol Officer and a resident of Beau-Vallon, Mahe on 21<sup>st</sup> June 2021 was found in possession of a controlled drug namely hashish (cannabis resin) with a net weight of 0.67 grams.

Count 5

**Statement of Offence**

Possession of a controlled drug contrary to and punishable under section 8(1) as read with the Second Schedule of the Misuse of Drugs Act, 2016

**Particulars of Offence**

Mervin Jimmy Joubert, 27 years old, a Watch Stander with the Regional Coordination Operation (RCOC) and resident of Beau-Vallon, Mahe, on the 21<sup>st</sup> June 2021 was found in possession of a Controlled drug namely Hashish (cannabis resin) with a net weight of 3.93 grams.

Count 6

**Statement of Offence**

Possession of a controlled drug contrary to and punishable under section 8(1) as read with the Second Schedule of the Misuse of Drugs Act, 2016

**Particulars of Offence**

Mervin Jimmy Joubert , 27 years old, a Watch Stander with the Regional Coordination Operation (RCOC) and resident of Beau-Vallon, Mahe, on the 21<sup>st</sup> June 2021 was found in possession of one (1) green pill containing controlled drug namely methylenedioxymethamphetamine (MDMA) (ecstasy) with a net weight of 0.37 gram and a piece of silver/grey substance containing a controlled drug namely methylenedioxymethamphetamine (MDMA) (ecstasy) with a net weight of 0.07 gram, giving rise to a grand total net weight of 0.44 grams.

Count 7

**Statement of Offence**

Possession of a controlled drug contrary to and punishable under section 8(1) as read with the Second Schedule of the Misuse of Drugs Act, 2016

**Particulars of Offence**

Mervin Jimmy Joubert, 27 years old, a Watch Stander with the Regional Coordination Operation (RCOC) and resident of Beau-Vallon, Mahe, on the 21<sup>st</sup> June 2021 was found

in possession of a controlled drug namely cannabis (herbal material) with a net weight of 0.42 grams.

[2] The facts of the case were presented to Court and admitted by the Accused therefore they were accordingly convicted.

[3] Mr. Camille appeared for both 1<sup>st</sup> and 2<sup>nd</sup> Accused. He submitted that the Accused have pleaded guilty; saving the Court's time. He invited Court to consider that the amount of drugs seized were rather on the low side and that despite the fact that there was a charge of trafficking, Courts in the past have imposed suspended sentences for such amounts of controlled drugs. He relied on the case of **R v Ricky Perry Zelia, [2019] SCSC 1043 CR46 of 2019**, which is a case also relied on by Mr. Basil Hoareau, Counsel for the 3<sup>rd</sup> Accused, Alex Cecile. However, he acknowledged that at the time of commission of the offence the 1<sup>st</sup> Accused was an ANB Officer but by pleading guilty he argued that the Accused has shown remorse. He made a mistake. Counsel relied on section 49 of MODA which Mr. Hoareau too addressed Court at length on its application. Section 49 lays down mitigating factors which support a reduction in sentence. In fact, since Mr. Basil Hoareau when submitting on behalf of his client addressed the provisions of section 49 in greater details and they shall be explored when I consider his submission to Court.

[4] Mr. Camille noted that his clients have acknowledged their responsibility in regards the charges against them. He noted that there wasn't any commercial element in the transaction as the amount of controlled drug was on the low side and urges that the Court imposes a fine on his clients. He notes that the last 3 counts which implicate the 2<sup>nd</sup> Accused concerns possession of cannabis which is a class B drug.

[5] In his submission in mitigation, Mr. Hoareau noted that the 3<sup>rd</sup> Accused who is 26 years of age, employed as Supervisor at a Marine Maintenance Company is a first time offender.

He has pleaded guilty and therefore showing remorse and saved the Court's precious time. He submitted that in meting out sentence the Court should consider section 47(1) of the Misuse of Drugs Act and section 49 stating that there was no aggravating circumstances attached to the offences committed by his client. He stated that there is no evidence of the Accused belonged to any organised group and no commercial element in the transaction in view of the amount of drugs seized. Counsel noted that other mitigating factors that exist in this case are that the 3<sup>rd</sup> Accused admitted of to having committed the offence. The 3<sup>rd</sup> Accused has by his guilty plea accepted responsibility of the harm that could have been caused by the offences committed. As stated, section 49 provides for mitigating factors the Court needs to consider when passing sentence.

[1] Section 49 provides that the following shall be considered mitigating factors;

- “(a) the offender’s admission of the truth of the charge through a guilty plea, particularly an early guilty plea;*
- (b) the offender’s acceptance of responsibility for the harm or potential harm associated with his or her offence;*
- (c) any substantial assistance given by the offender to law enforcement authorities, as an informer or otherwise, in the prevention, investigation , or prosecution of any other offence under this Act;*
- (d) the absence of any commercial element in the offence;*
- (e) the presence of an element of coercion, for example the family member or employer;*
- (f) the absence of prior convictions, or prior formal cautions under the Act; and*
- (g) the fact that the other person was involved in or directly harmed by the offence.”*

Where any of these mitigation factors applicable to the Accused, the Court shall accord them the benefit of such factors.

- [2] Therefore, he urged Court to be lenient on the 3<sup>rd</sup> Accused and impose a sentence that shall do justice to the case. He referred to the case of **R v Ricky Perry Zelia (supra)**, where, in somewhat similar circumstances, this Court imposed non-custodial sentences and fines. He also referred to the case of **R v Dave Paul Delpech & Anor [2022] SCSC 477 CO 09/2021** which also imposed non-custodial sentences of similar circumstances.
- [3] Section 48 of MODA however deals with aggravating factors that will support a more severe sentence. It provides for several factors that would be considered aggravating but we are here concerned with subparagraph (1)(e) which provides thus; *“the fact that the offender holds public office or high profile position in the community; particularly if the offence is connected with the office or position in question.”* Is to be considered an aggravating factor. I note in this case that the 1<sup>st</sup> Accused was at the material time an ANB officer. This is the same force mandated with the fight against controlled drugs. The 2<sup>nd</sup> Accused was at the time of the incident a Watch Stander with the Regional Coordination Operation (RCOC) which is part of the law enforcement bodies.
- [4] A guilty plea will indeed earn the Accused credit as far as sentence is concerned. **Blackstone’s Criminal Practice (2012), paragraph E.12 p2148** provides 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 the case of an early plea, saves inconvenience of witness to give evidence before court and therefore that *“reduction should be a proportion to the total sentence imposed calculated by references in which the guilty plea was indicated, especially at what stage of the proceeding.”*
- [5] I have fully considered all matters in mitigation.
- [6] Count 3 was in alternative to Counts 1 and 2. The 1<sup>st</sup> and 2<sup>nd</sup> Accused respectively having pleaded guilty to those counts did not take a plea on the Count 3. Therefore, the Court considers that Count 3 is withdrawn.
- [7] I appreciate that in meeting out sentence, Courts have to bear in mind that the classic principles of sentencing are deterrence, prevention, rehabilitation, reformation and



retribution; see **Lawrence v Republic [1990] SLR 47**. I shall also take into consideration the principle of proportionality of sentence.

[8] Therefore the Court imposes the following sentences on the Accused;

(vii) Count 1: I sentence the 1<sup>st</sup> Accused to 1 year and 6 months imprisonment and a fine of SR15,000/- payable within 3 months from being released from prison and in default to 4 months imprisonment ;

(viii) Count 2: I sentence the 3<sup>rd</sup> Accused to a term of 1 year and 6 months imprisonment suspended for 2 years and to a fine of SR21,000/- payable within 4 months hereof and in default to a term of 5 months imprisonment;

(ix) Count 4, I sentence the 1<sup>st</sup> Accused to a term of 2 weeks imprisonment suspended for 6 months;

(x) Count 5; I sentence the 2<sup>nd</sup> Accused to a fine of SR3000/- payable within 2 months hereof and in default to a term of 1 month imprisonment;

(xi) Count 6: I sentence the 2<sup>nd</sup> Accused to a fine of SR1200/- payable within 3 months hereof and in default to a term of 2 weeks imprisonment.

(xii) Count 7: I sentence the 2<sup>nd</sup> Accused to a fine of SR1200/- payable within 3 months hereof and in default to 2 weeks imprisonment

[9] Time spent on remand shall be discounted against the term of imprisonment of the 1<sup>st</sup> Accused.

[10] In view of the aggravating factor in regards to the 1<sup>st</sup> Accused, he shall not be entitled to any remission on his sentence.

[11] 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 on 14<sup>th</sup> July 2022

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M Vidot J