

IN THE SUPREME COURT OF SEYCHELLES

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Reportable

[2023] SCSC 414

CR45 /2022

CB 16/10/22 Anse Aux Pins

In the matter between

**THE REPUBLIC**

(rep. by Derika Figaro)

**Prosecution**

and

**PRINCE AMARI**

(rep. by Basil Hoareau)

**Accused**

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**Neutral Citation** *The Republic v Prince Amari* (CR45/2022) SCSC..... delivered on 02 June 2023

**Before:** Vidot J

**Summary** Importation of a controlled drug contrary to and punishable under section 5 of the Misuse of Drugs Act 2016 read with the Second Schedule of the said Act.

**Heard:**

**Delivered:** 02 June 2023

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**SENTENCE**

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**VIDOT J**

- [1] The Accused stands charged with and pleaded guilty to one count of importation of a controlled drug contrary to and punishable under section 5 of the Misuse of Drugs Act 2016 read with the Second Schedule of the said Act.

- [2] The particulars of the offence are that the Accused, a 37 year old Nigerian National, holder of passport number B00446219 on the 04<sup>th</sup> October 2022, at the Seychelles International Airport, imported into Seychelles a controlled drug, 1892.27 grams of white substance with a cocaine content of 1342.85 grams.
- [3] The facts of the case as read out by Counsel for the Prosecution, are that the Accused arrived in Seychelles on board an Ethiopian flight on 04<sup>th</sup> October 2022. Officers who were at the airport profiling passengers noticed that Mr. Amari was acting suspiciously. He was searched and foreign bodies suspected to be controlled drug were detected on his body after a body scan was performed. He was demonstrating physical strain and taken to Victoria Hospital. A CT scan was done and foreign bodies were found to be present in his abdomen. He excreted 21 cylindrical shaped packets which contained white substance. He was taken at the CID office at Bois de Roses for further questioning. He was informed of his Constitutional rights The substance was analysed at the police scientific laboratory and confirmed to be cocaine.
- [4] The facts were admitted by the Accused, so the Court proceeded to convict the Accused as charged. Since the Accused is a first time offender, Counsel for the Accused moved the Court for a probation (pre-sentence) report and the Court granted the Application. A report dated 07<sup>th</sup> March 2023 was prepared and served on Counsels and the Court.
- [5] On the 26 May 2023, date fixed for mitigation, Counsel for the Accused was absent. The Court had on two prior occasions fixed the case for mitigation, but due to Counsel's inability because of his involvement in other cases in other courts, the Court adjourned the case to 26 May 2023.
- [6] Therefore, the Court invited the Accused to make any submission that he may have and Court assisted by putting certain questions to him. I shall, before meting out sentence give due consideration to matters raised by the Accused in mitigation and the report.
- [7] The Accused complained of certain health issues. He at times suffers of high blood pressure.

- [8] The Accused explained that he got involved in this crime out of ignorance. He was recruited by a friend who had informed him that he could be sent to Seychelles to work. Being unemployed and the fact that his wife was pregnant, he agreed. When he reached Ethiopia he was informed that he will be bringing money into Seychelles and given a sealed package. He told the Probation Officer that he did not know that he was carrying drugs. The Accused acknowledges culpability and shows remorse by asking for forgiveness and prays that the Court shows leniency on him.
- [9] The Accused further states that his wife is unemployed and struggling financially and their children had to drop out of school as a result thereof. The Probation Services noted that they established telephonic communication with the Accused's wife but that communication was difficult as she speaks little English, but it was established that the couple has four children and the youngest is only two months old.
- [10] The Accused is a first time offender and pleaded guilty so therefore, should earn credit for that. He has shown remorse and accepted responsibility for the offence. He has saved the Court's precious time and inconvenience of witnesses having to testify in court; see **Blackstone's Criminal Practice (2012), paragraph E.12 p2148**. In fact, section 49 of the Misuse of Drugs Act lists "*admission of the charge through a guilty plea, particularly an early guilty*" plea and the fact that "*no person was ..... directly harmed by the offence*" as mitigating factors in support of a reduction in sentence. Section 49 (f) provides that "*the absence of prior convictions or prior formal cautions under the Act*" as migrating factor as well.
- [11] However, the quantity of drugs seized shows that there was a commercial element, as provided for under section 48(1)(a) the "*presence and degree of a commercial element in the offending, particularly where controlled drug is imported into Seychelles*" is an aggravating factor. In this case, the amount of drug is considerable.
- [12] I do not believe the Accused when he states that he did not know that he was importing drugs into Seychelles. In the report he says that he was given a package and told that he contained money which he has to bring into Seychelles. That does not explain as to how come drug was discovered inside his body. I have no doubt that he agreed to ingest the

cylindrical packages in which the drug was found because he had full knowledge of its nature.

- [13] Drugs remains a problem of epic proportion in the Seychelles. The fight to eradicate or at best reduced its consumption seems to have been in vain as more and more people of all ages have fallen prey to it, with devastating consequences. The country uses much needed resources just to bring a fight against illicit drugs. At the moment I do not believe that we are seeing light at the end of the tunnel. The fight is far from being won. Families continue to endure torture as the use of drugs break them down.
- [14] I appreciate that in meeting out sentence, Courts have to bear in mind that the classic Consideration of sentencing which 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.
- [15] When I consider the principal of proportionality of sentence, I note that it operates to guard the imposition of unduly lenient or unduly harsh sentence. In **R v Scott [2005] NSWCCA 152**, the Court in Australia stated
- “There in a fundamental and immutable principle of sentencing, that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed. The principle arose under the common law: R v Geddes [1939] SR (NSW) 554 and R v Dodd [1991] 57 A Crim. R 349 ..... one of the purposes of punishment is “to ensure that an offender is adequately punished””*
- [16] After, considering all mitigating factors, I sentenced the Accused to a term of 14 years imprisonment.
- [17] Time spent on remand shall be discounted against the sentence.
- [18] As the offence is aggravated in nature, the Accused shall not be entitled to any remission.
- [19] 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 02 June 2023

  
M Vidot J

