

## IN THE SUPREME COURT OF SEYCHELLES

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### Reportable

[2023] SCSC ...

CR49 /2019

In the matter between

**THE REPUBLIC**

(rep. by Corine Rose)

**Prosecution**

and

**KERRENCE FANNY**

(rep. by Evelyn Almeida)

**Accused**

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**Neutral Citation** *The Republic v Kerence Fanny* (CR49/2019) [2023] SCSC.....

delivered on 27 January 2023

**Before:** Vidot J

**Summary** Trafficking in a controlled drug, by means of being in unlawful possession of a controlled drug with intent to traffic, contrary to section 9 (1) of the Misuse of Drugs Act 2016 read with section 9(1)(c) of the said Act and punishable under section 7(1) read with the Second Schedule of the said Act.

**Heard:** 12 January 2023

**Delivered:** 27 January 2023

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## SENTENCE

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### VIDOT J

[1] The Accused stands charged with one count of Trafficking in a controlled drug by virtue of being found in unlawful possession of a controlled drug, with intent to traffic contrary to section 9(1), read with section 19(1)(c) of the Misuse of Drugs Act 2016 and punishable under section 7(1) read with the Second Schedule of the said Act. The particulars of the offence are that on 31<sup>st</sup> May 2018, being an inmate at Montane Possee Prison, the Accused was trafficking in a controlled drug by virtue of having been found in

unlawful possession of a substance having a net weight of 20.5 grams which contained a controlled drug namely heroin with a purity content of 64%, amounting of 12.85 grams which gives rise to a rebuttable presumption of having possessed the said controlled drug with intent to traffic.

[2] The Accused pleaded guilty to the Count. The Prosecution then read the facts to Court. They are that On 31<sup>st</sup> May 2018, the Prison Authorities received information that the Accused whilst working at IPHS as part of a work rehabilitation programme had swallowed drugs. The Accused was taken to Victoria Hospital where a CT Scan was conducted and drug was discovered around the anal area of the Accused. He was then brought to the ANB Office for further procedures whereby he excreted the controlled drug which was wrapped in plastic. The ANB Officers informed him of the offence of possession of a controlled drug. He was arrested and cautioned. The suspected controlled drug which was kept in possession of the ANB and sent for analysis was confirmed to be controlled drug namely heroin weighing 20.5 grams with a purity content of heroin of 12.85 grams. The Accused admitted the facts and was accordingly convicted. Accused's Counsel then requested for a Probation (Pre-Sentence) Report ("the report") before making submission. The application was allowed and a report dated 11<sup>th</sup> January 2023 was prepared and served on Counsels.

[3] The report together with submission in mitigation shall be fully considered before meting out sentence.

[4] In the report the Accused admitted to committing the offence but intimated that it happened when he was on work programme with the prison and an ex-inmate had asked him to pick up the drugs from a civilian and that that former convict had promised to give him some drugs in return and that despite knowing the risk he agreed to it because he was drug dependent.

[5] The Accused has pleaded guilty and has shown remorse and has accepted responsibility for the offence committed. A guilty plea in fact should earn an accused credit as far as sentence is concerned. In fact in terms with section 49(a) of the Misuse of Drugs Act (MODA) 2016, a guilty is a mitigating factor for a reduction in sentence. In migration

Counsel noted that a guilty plea saves the Court's precious time and saves the inconvenience of witnesses having to testify. This is the position advocated in **Blackstone's Criminal Practice (2012), paragraph E12 p2148** which states that a guilty plea would in effect earn an accused a reduction in sentence and that "*reduction should be a proportion of the total sentence imposed calculated by references in which the guilty plea was indicated, especially at what stage of proceedings.*"

- [6] Counsel also remarked that Section 49 of MODA provides that an accused's acceptance of responsibility for the harm or potential harm associated with the offence, the absence of any commercial element in the offence and the absence of prior convictions should also be considered as mitigating factors. Such factors are present in this case.
- [7] Imploring for a lenient non-custodial sentence Counsel for the Accused relied on **R v Marcus Dugasse (CR26/2020)** where the accused were convicted of trafficking and agreeing to traffic in a controlled drug, namely 54.84 grams of substance with a purity content of cocaine of 32.82 grams and were sentenced to suspended sentences and fines. Other such cases include **R v Clifford Adeline CO63 of 2020, [2022] SCSC 122**, **R v Micky Perry Zelia [2019]** and **R v Dhalin Joubert & Ors CR70/2021**. In these cases suspended sentences were also meted out in circumstances similar to the present case. However, it must be emphasised that each case must be decided on its own facts. However, this Court will give due attention to these authorities.
- [8] In fact what Counsel was advocating for is for consistence in sentencing pattern. In **Hili vs. The Queen**, the High Court of Australia stated that consistency is not demonstrated by and does not require numerical equivalence rather consistency is obtained in the application of the relevant legal principles.
- [9] I have given due consideration to the mitigation and the report in meting out sentence and remain very conscious that drugs is a phenomenal problem in our society affecting a sizeable percentage of the population and the youth are being most affected and Courts have to answer to this persistent problem which is far from being resolved. It requires a lot of resources to tackle the problem, resources that could have been put to more beneficial use to society.

[10] In the circumstances, I convict the Accused to one (1) year and six (6) months imprisonment and a fine of SR18,000.00 payable within 8 months of this sentence and in default to 6 months imprisonment.

[11] The term of imprisonment shall be suspended for two (2) years.

[12] If unsatisfied with this sentence, the Accused has a right of appeal against the same within 30 working days from today.

Signed, dated and delivered at Ile du Port on 27 January 2023.

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M Vidot J