

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
CO 32/2023

In the matter between:

THE REPUBLIC
(Represented by Ms Corrine Rose)

Prosecution

vs

EDWARD ABAZZ ADELONA
(Represented by Mrs Alexia Amesbury)

1st Accused

And

HENDRICK WILLIAM
(Represented by Mr Joshua Revera)

2nd Accused

Neutral Citation:	<i>Rep vs Adelona & Or</i> (CO 32/2023) [2023] SCSC	(23 rd June 2023)
Before:	Adeline J	
Summary:	Sentencing of convicted persons	
Heard:	(Submissions)	
Delivered:	23 June 2023	

SENTENCE

Adeline, J

INTRODUCTION

[1] By way of an amended charge dated 1st June 2023 pertaining to CB No: 109/04/23, the 1st accused/convict, one Edward, Abazz Adelona, a 46 year old engineer of Anse Aux Pins, Mahe was indicted with one count (Count 1) of trafficking in a controlled drug by means of being found in unlawful possession of a controlled drug with intent to traffic, contrary

to Section 9 (1) of the Misuse of Drugs Act, 2016 punishable under Section 7 (1) read with the Second Schedule of the said Act.

[2] The particulars of the offence as featured in the charge sheet read as follows;

“Edward Adelona, a 46 year old, engineer of Anse Aux Pins, Mahe on the 30th April 2023, at Anse Aux Pins, Mahe was found in unlawful possession of a controlled drug namely cocaine with a total net weight of 51.02 grams which gives rise to a rebuttable presumption of having possession of the said controlled drug with intent to traffic”

[3] Also indicted in the same amended charge dated 1st June 2023, was the 2nd accused/convict Hendrick William, a 47 year old self-employed of Ma Constance, Anse Etoile, Mahe. He too was indicted of one count (Count 2) of trafficking in a controlled drug by means of being found in unlawful possession of a controlled drug with intent to traffic, contrary to Section 9 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 7 (1) read with the Second Schedule of the said Act.

[4] The particulars of the offence as featured in the charge sheet reads as follows;

“Hendrick William, 47 years old, self-employed of Ma Constance, Anse Etoile, Mahe on the 30th April 2023, at Anse Aux Pins, Mahe was found in unlawful possession of a controlled drug namely cocaine with a total net weight of 59.59 grams which gives rise to a rebuttable presumption of having possession of the said controlled drug with intent to traffic”.

[5] On the 7th June 2023, the 1st and 2nd accused/convicts both pleaded guilty to the charge, and after admitting the facts and circumstances they committed the offence as narrated by the prosecution, they were both accordingly convicted for one count of trafficking in a controlled drug by means of being found in unlawful possession of a controlled drug with intent to traffic.

[6] The two accused/convicts are before this court today for sentencing.

PLEA IN MITIGATION

[7] In plea in mitigation before sentencing, learned counsel for the 1st accused/convict submitted, that her client has pleaded guilty at the earliest opportunity given to him as an expression of remorse, and in doing so, has not wasted the court's time and resources, and therefore he should receive some credits. Learned counsel also submitted, that her client did cooperate fully with the police, and that he is a first time offender who is unlikely to reoffend given his first life time experience of having been incarcerated following his arrest for the offence. Learned counsel further submitted, with great emphasis, that the fact that the purity of the actual cocaine content in the substance weighed 51.02 grams remains unknown as has been confirmed by the prosecution, that should be considered as significant in deciding the right and appropriate sentence in this case.

[8] In plea in mitigation on behalf of the 2nd accused/convict, learned counsel submitted, that his client has pleaded guilty, and in doing so, has not wasted the court's time. Learned counsel stated, that the 2nd accused/convict is remorseful and wish that the court exercises mercy as his client pleads for mercy. Learned counsel also submitted, that his client is not a member of any criminal group and that his involvement in the commission of the offence was mainly because of an error of judgment, and that it was not his intention to generate an income from the transaction. Learned counsel reckons, that a suspended sentence would be proportionate and appropriate to fit the crime and the circumstances of the offender.

THE LAW AND SENTENCING UNDER MODA

[9] The court's approach to sentencing a person convicted of a drug offence under the Misuse of Drugs Act, 2016 (MODA) is guided by various statutory provisions under the said Act. As regards to the offence of trafficking in a controlled drug by means of being

found in unlawful possession of a controlled drug with intent to traffic, it is imperative to mention the following;

Section 19 (1) of MODA

“A person who is proved or presumed to have had in his possession or custody or under his or her control (c) 2 grams or more of diamorphine (heroin) or cocaine shall be presumed, until the person proves the contrary, to have had the controlled drug in his possession with intent to traffic in contravention of Section 9 of this Act.”

It should be borne in mind, that in this instant case, the presumption which is rebuttable was not rebutted by the 1st and 2nd accused/convicts who were charged with the offence and pleaded guilty.

[10] Section 9 (1) of MODA

“A person who possesses a controlled drug whether lawfully or not, with intent to traffic in contravention of this Act, commits an offence of trafficking and is liable on conviction to the penalty specified for an offence under Section 7 (1).”

[11] Section 7 (1) of MODA

“A person who traffics in any quantity of 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 (of MODA)”.

[12] The penalty specified in the Second Schedule of MODA applicable to Section 7 (1) and 9 (1) of MODA for a Class A drug prescribed under the First Schedule under Part 1 which include cocaine, is a maximum life imprisonment or a maximum fine of SCR 750,000.

[13] Part VI of MODA specifically provides for sentencing. Section 47 (1) reads as follows;

“In sentencing a person convicted of an offence under Part II of this Act, whether upon a guilty plea following trial, the court shall have regard to;

- (a) The objective of the Act*
- (b) The decree of control to which the relevant controlled drug is subject, and*
- (c) The general objective of transparency and opportunity in sentencing”.*

[14] Section 48 of MODA provides for aggravating factors that support a more serious sentence. They include the following;

- (a) The presence and degree of a commercial element in the offending, particularly, where the controlled drugs have been imported into Seychelles.*
- (b) The involvement in the offence of an organised criminal group to which the offender belongs,*
- (c) The involvement of the offender in other offences facilitated by or related to the commission of the offence.*

[15] Section 49 provides for the mitigating factors for consideration that support the reduction in sentence for the offence. They include the following which I find most relevant for the purposes of this exercise;

“49

- (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)*

- (e) *The absence of any commercial element in the offence.*
- (f) *The absence of prior convictions or formal caution under this Act*
- (g)”.

[16] In meting out the right and appropriate sentence in this case, I have had to take note of Section 7 (4) of MODA, in that, it is only when the weight in trafficking offence is over 250 grams that the court should treat the offence as aggravated in nature. Otherwise, as in the instant case, it has to find the existence of the aggravating factors under Section 48 of MODA.

[17] I am bound by the provision under Section 47 (2) of MODA that reads as follows;

“Where an aggravating or mitigating factor identified in Section 48 or 49 applies to the circumstances of the offence, the convict shall expressly identify that factor and give weight to it in considering the appropriate sentence”.

[18] A quick look at the recommended sentences made under MODA for a Class A drug as in the instant case in respect of a first time offender, indicates that if I am to follow the recommendation, the starting point should be a term of imprisonment of 8-12 years given that the weight of the drug is between 50 grams up to 200 grams. However, this is based on purity, and in the instant case the purity of the drug, cocaine, is unknown.

[19] Having had regard to the law as discussed in the preceding paragraphs of this sentence and the sentencing guidelines, as well as the facts and circumstances of this case, I have taken note of the fact, that the amount of drugs in respect of the two offences has a total net weight of 51.02 grams and 59.59 grams respectively without the purity known, far less than 250 grams required under Section 7 (4) of MODA for the court to treat the offence as aggravated in nature. Furthermore, the existence of the aggravated factors under Section 48 of MODA has not been laid before this court.

[20] To the contrary, through plea in mitigation, learned counsels for the accused/convicts mentioned few of the mitigating factors spell out under Section 49 of MODA which they said have to be taken into account for a reduced sentence, particularly, the following;

- (a) The fact that the accused/convicts admit the charge in an early guilty plea.
- (b) The fact that they cooperated with the police, and
- (c) The absence of previous convictions or cautions for similar offence.

[21] I have also taken into account other matters raised by defence counsels in plea in mitigation on behalf of the accused/convicts and their plea for the court to exercise leniency, and to give them both a second chance which they said the accused/convicts greatly deserve. Much emphasis was put by learned counsels on the fact that the accused/convicts pleaded guilty to the charge thus avoiding wasting the court's time and resources, a factor that in their opinion, should greatly influence the sentence that will do justice to the case.

[22] Is it settled law, that a guilty plea earns an accused/convict credit in respect of a possible sentence on conviction. The principle that a guilty plea should have the effect of reducing a sentence is discussed in one of the most authoritative criminal law practice handbook, Blackstone's Criminal Law Practice. This principle is also supported by case law (see for example **Labiche v Republic SCA 1 (a) 2004 LC 288**).

THE SENTENCE

[23] Within the background of the discussions of the law above, and to some extent the facts and circumstances of which the two accused/convicts committed the offence of which they have been convicted, and in consideration of other matters raised by defence counsels in plea in mitigation, I therefore sentence the accused/convicts as follows;

- (i) I sentence the 1st accused/convict Edward, Abazz Adelona of Anse Aux Pins, Mahe to a term of imprisonment of 1 year as of today for the offence of

trafficking in a controlled drug by means of being found in unlawful possession of a controlled drug with intent to traffic contrary to Section 9 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 7 (1) read with the Second Schedule of the said Act. By virtue of Section 282 of the Criminal Procedure Code, the 1 year term of imprisonment is suspended for two years as of today on condition that during the two year period the 1st convict is not charged with any drugs related offence.

- (ii) I also fine the 1st accused/convict the sum of SCR 15,000 which must be fully paid by the 30th of December 2023 in default of which the 1st accused/convict shall serve a term of imprisonment of 6 months.
- (iii) Equally, I sentence the 2nd accused/convict, Hendrick William of Ma Constance, Anse Etoile, Mahe to a term of imprisonment of 1 year suspended for two years as of today for the offence of trafficking in a controlled drug by means of being found in unlawful possession of a controlled drug with intent to traffic contrary to Section 9 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 7 (1) read with the Second Schedule of the said Act. By virtue of Section 282 of the Criminal Procedure Code, the 1 year term of imprisonment is suspended for two years as of today on condition that during the two year period the 2nd accused/convict is not charged with any drug related offence.
- (iv) I also fine the 2nd accused/convict the sum of SCR 15,000 which must be fully paid by the 30th December 2023 in default of which the 2nd accused/convict shall serve a term of imprisonment of 6 months.

[24] The accused/convicts have the right of appeal to the Court of Appeal against the sentence so imposed on them by this court.

Signed, dated and delivered at Ile du Port 23 June 2023.

B Adeline, J