

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC ...

CO 07/2017

In the matter between:

THE REPUBLIC

(rep. by H Kumar)

and

Albert Geers

1st Accused

Mary Geers

2nd Accused

Albert Alexander Geers

3rd Accused

(rep. by B Hoareau)

Neutral Citation: *R v Albert Geers and ors* CR 07/2017) [2022] SCSC (18 July 2022).

Before: Govinden CJ

Summary:

Heard: 7th November 2023

Delivered: 12th January 2023

ORDER

- i. On count 1, the court imposes 6 years' imprisonment on the convict, together with a fine of Rs100, 000 to be paid within 30 days of this sentence in default of the payment of his fine the convict shall serve a further 2 years' imprisonment which shall be consecutive to the 6 years imprisonment.
- ii. On count 2, the court imposes 5 years' imprisonment on the convict, together with a fine of Rs100, 000 to be paid within 30 days of this sentence, in default of the payment of his fine the convict shall serve an additional 2 years imprisonment which shall run consecutive to the 5 years imprisonment.
- iii. The terms of imprisonment imposed under count 1 and 2 run concurrently

with one another.

- iv. Time spent in remand to count towards sentence.
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JUDGMENT/RULING

GOVINDEN CJ

The charges

The 3rd accused, who shall for the purpose of this sentence be referred to as “*the convict*”, has been found guilty of the following two counts and have been convicted accordingly;

Count 1

Statement of offence

Possession with intent to trafficking in controlled drug, namely cannabis herbal materials 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.

Particulars of offence

Albert Alexander Roderick Geers of Bel Ombre, Mahe, on 30th May 2017 to 31st May 2017 at his residence in Bel Ombre, Mahe, possessed the controlled drug having net weight of 3.945 kilo grams of cannabis unlawfully with intent to traffic in contravention of the said Act committed the offence of Trafficking.

Count 2

Statement of offence

Cultivation of a controlled drug namely cannabis plants contrary to section 6(2) of the Misuse of Drugs Act 2016 and punishable under the second schedule to the Misuse of Drugs Act, 2016

Particulars of offence

Albert Alexander Roderick Geers of Bel Ombre, Mahe, on 31st May 2017 at his residence in Bel Ombre, Mahe possessed 49 cannabis plants in doing cultivation

[2] For the purposes of this sentence, the court will take the convict as first time offender as indicated by the prosecution.

[3] At the request of learned Counsels for the convict a Probation Services Pre-Sentencing Reports was requested from the Probation Services. In the report Probation Services recommended that a suspended sentence coupled with a fine be imposed on the accused.

[4] The court in coming to its determination as to the appropriate sentence has appraised itself with the provisions of the law when it comes to sentencing under the Act under which the convict has been charged. That is the provisions of Section 47 of the Misuse of Drugs Act, hereinafter also referred to as “*the MDA*”, which provides follows:

(1) In sentencing a person convicted of an offence under Part II of this Act, whether upon a guilty plea or following trial, the Court shall have regard to

—

(a) the objectives of the Act;

(b) the degree of control to which the relevant controlled drug is subject;
and

(c) the general objectives of transparency and proportionality in sentencing.

(2) Where an aggravating or mitigating factor identified in section 48 or section 49 applies to the circumstances of an offence, the Court shall

expressly identify that factor and give weight to it in considering the appropriate sentence.

- (3) In sentencing a person who has been identified as a drug user or a drug dependent person, the Court shall follow the process set out in section 38 or section 39.*
- (4) In sentencing a person convicted of an offence under section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all the circumstances.*
- (5) In sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the Court shall have due regard to the indicative minimum sentence for aggravated offence of that kind.*
- (6) Mitigating factors that support a reduction in sentence for offences under Section 48 of the Act includes,*

(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 from a family member or employer;

(f) the absence of prior convictions or prior formal cautions under this Act; and

(g) the fact that no other person was involved in or directly harmed by the offence.

Power of
arrest

Procedure

[5] The provisions of the MDA with regards to aggravating factors are as follows;

48.(1) Aggravating factors that support a more serious sentence for offences under the Act includes —

- (a) the presence and degree of a commercial element in the offending, particularly where 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 commission of the offence;*
- (d) the use of violence or weapons by or on behalf of the offender;*
- (e) the fact that the offender holds public office or a high-profile position in the community, particularly if the offence is connected with the office or position in question;*
- (f) the targeting, involvement, use, or exploitation of children in connection with the offence;*

- (g) the fact that the offence was committed in a penal or educational institution, social service facility or in other places related to education, sports, or social activities, or in their immediate vicinity; and*
- (h) prior convictions (subject to the Rehabilitation of Offenders Act), particularly for similar offences, whether foreign or domestic, or prior formal cautions under this Act.*

(2) Where one or more of the aggravating factors identified in subsection (1) is present to a significant extent, the Court shall treat the offence as aggravated in nature.

[6] I have also considered the pleas in mitigation made by learned Counsel for the convict; the contents and recommendations of the Pre-Sentencing Report; the facts and circumstances of this case upon which the convictions were based; the sentencing pattern in cases of similar nature rendered by this court and the Seychelles Court of Appeal. Having done all this I have come to the following determination.

[7] The court is of the view that there are certain mitigating factors that can be identified in this case. In accordance to Section 47 (2) of the MDA, I give to each due weight that would mitigate for a lenient sentence. First, it is to be noted that though the convict has not pleaded guilty at the very first opportunity nor has he accepted the harm or potential harm caused by his act on society, he has accepted possession of the controlled drug in count 1 and had been engaged with the prosecution at the very outset to enter into a plea bargain with the prosecution on this basis, though to no avail. This amount to some acceptance of responsibility and in the spirit of Section 47 (6) (a) and (b) of the MDA. Secondly, I also find as mitigatory the convict deep seated conviction in the cause of liberalisation of Cannabis used for medical purpose in Seychelles. It is undisputed that it was based on this passion that he had tried to lobby many Senior Governmental officers and authorities to legalise the medical use of Marijuana in this Country. In this regard he claimed that the drugs were only for his personal use and for experimental purposes, something which was not believed by the court. The court feels that his misconceived attitude of the need for leniency towards the controlled drug cannabis could have led him towards the misbehaviours that led this conviction. The third mitigating factor is that the convict is a first time offender. The fourth is that he is relatively young offender with a seemingly stable employment. The last is that he is a user of the same kind of controlled drug for which he stands charge, albeit not a drug dependent person.

[8] However, there is one aggravating circumstance as described in section 48 of the MDA. That is that the fact of the case shows the presence and degree of a commercial element in the offending. Here I will repeat a finding of fact that I made in convicting the convict, where I held as follows, *“The prosecution having proven such a large amount of cannabis in possession of the accused, the latter attempted the discharge the onus of proof by stating that it was for his own personal use as he was self-medicating his medical condition. However, this does not explain the large amount of cannabis, in order to treat his alleged ailment, he did not need the total number of kilograms seized from his possession. He has not convinced this court on a balance of probabilities that he would need so much of cannabis in order to treat his dyslexia, as I have further found below, to the contrary, this amount only renders the fact that he had the intent to traffic more*

probable and that he had it for the purpose of supplying or selling which is an act of trafficking”

[9] I am therefore bound to treat this case as one that has a degree of aggravation under the MDA. Accordingly, I must also give due regards to the Indicative Minimum Sentence set out under the Act and see whether it merits being imposed in this case. Under Section 47 (5) of the MDA, a person convicted of an offence under the Act in circumstances where the offence is aggravated in nature, the Court must have due regard to the indicative minimum sentence for aggravated offence of that kind. The indicative minimum sentence for the offences of aggravated possession with intent to traffic and cultivation of a controlled drug as charged is 15 years’ imprisonment and that of cultivation of cannabis is 8 years of imprisonment. However, as the Act itself stipulates, these are only indicative minimum sentences, they are not binding on the court. They would vary depending on the circumstances of each case. To the extent that the court is satisfied that the facts of the case merits it, the court can impose sentences a lower sentence or a higher one depending on the relative gravity of the case.

[10] The courts in the imposing these sentences is also conscious of the need to apply settled sentencing principles as was enunciated in the case of *ML & Ors, SC Cr 38/19* and the need to individualized the sentence and to render it proportionate so as to fit the circumstances of the case. The three test enunciated in the case of *Ponnoo vs R (2011) SLR 424*, with regards to totality of sentencing principle have also been followed. The sentences imposed would be proportionate to the crimes committed bearing in mind the individual circumstances of the convict. As I have said above though the amount of drug is relatively high in the case and there is some elements that indicates commerce, this fact is off-set by the presence of mitigating factors.

[11] Bearing all these in mind, I order as following;

- i. On count 1, I impose 6 years imprisonment on the convict, together with

a fine of Rs100, 000 to be paid within 30 days of this sentence in default of the payment of his fine he shall serve a further 2 years imprisonment which shall be consecutive to the 6 years imprisonment.

- ii. On count 2, I impose 5 years' imprisonment on the convict, together with a fine of Rs100, 000 to be paid by the convict within 30 days of this sentence, in default of the payment of his fine he shall serve an additional 2 years' imprisonment which shall run consecutive to the 5 years' imprisonment.
- iii. The terms of imprisonment imposed under count 1 and 2 run concurrently with one another.
- iv. Time spent in remand to count towards sentence.

Signed, dated and delivered at Ile du Port on 12th January 2023

Govinden CJ