

SUPREME COURT OF SEYCHELLES

Reportable
CO 35/2022

In the matter between:

THE REPUBLIC
(*rep. by Hashini Naidu*)

Prosecution

and

DWAIN WILLIAM
(*rep. by Anthony Juliette*)

Accused

Neutral Citation: *The Republic v William* (CO35/2022) (09 July 2024)

Before: Esparon J

Summary: Sentence

Heard: 09th May 2024

Delivered: 09th July 2024

ORDER

Sentence- The accused Dwain William is sentenced to a term of 2 years imprisonment. In addition the accused is also sentenced to a fine of 50,000 Rupees. The accused shall pay the said fine within a period of 6 months from the date that he finishes serving his sentence in default of which the accused shall serve a term of 6 months imprisonment.

SENTENCE

ESPARON J

Introduction

- [1] The accused Dwain Dilen Steven William has been charged with the offence of committing the offence of Trafficking in a controlled drug contrary to section 10 of the Misuse of Drugs Act, 2016 by way of organizing and managing the commission of the offence under section 7(1) of this Act. The particulars of the offence reads as follows;

‘ Dwain Dilen Steven William, 20 years old, contractor resident of Corgat Estate, Mont Fleuri on or around August 2022 at Mahe organized and managed the commission of the offence of trafficking in a controlled drug namely Heroin (diamorphine) with net weight of 100,31 grams with heroin (daimorphine) content of 60.18 grams.’

- [2] In the alternative to Count 2 namely count 3, the Accused has been charged with the offence of aiding and abetting the trafficking of a controlled drug contrary to section 15(1) (a) read with section 7(1) and section 2 of the misuse of Drugs Act, 2016. The particulars of the offence reads as follows;

‘In that Dwain Dilen William, 20 years old, contractor resident of Corgate Estate, Mont Fleuri on or around August 2022 at Mahe aided and abetted one Raphael Pierre-Louis of Foret Noire, Mont Fleuri to traffic in a controlled drug namely heroine (diamorphine) with net weight of 100.31 grams with Heroin (diamorphne) content of 60.18 grams.’

- [3] The accused has pleaded guilty to the alternative count to count 2 namely count 3 for the offence of aiding and abetting the trafficking in a controlled drug contrary to section 15(1) (a) read with section 7 and section 2 of the Misuse of Drugs Act, 2016 and has been convicted on his own guilty plea after admitting the facts of the prosecution case.

Mitigation

- [4] In mitigation Counsel for the accused has put before the court that the accused is of 21 years of age and owns his own construction maintenance business together with his partner. That the accused has pleaded guilty saving the precious time of the Court and he has shown remorse for having committed the offence. He has pleaded guilty saving the precious time of the Court and that he is very highly remorseful. He has also highlighted the fact that the accused has pleaded guilty to the offence of aiding and abetting which is an offence secondary by nature of which according to counsel he has lent his friend 20,000 when he was going to India and has not benefited from the transaction. Furthermore there are no

aggravating circumstances in this case. That he has been a footballer and a member of the national team.

- [5] Counsel for the accused also stated that he is a first offender and that he was either negligent or reckless in this matter. He also highlighted the fact that the Court has already sentenced the possessor for 9 months imprisonment and as such the sentence should not be substantially different. Counsel also cited and relied on the case of the Republic V Madeleine of which the accused was sentence to one year imprisonment suspended for 3 years and a fine if 30 000/- and submitted to the Court that the Court should consider a suspended sentence in the present case.
- [6] The probation report has recommended that the Court imposes a suspended sentence and a fine.

The law

- [7] At this stage, the Court has to draw its attention to section 47 of MODA which makes provision for the following;

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

(a) the objectives of the Act

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

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

(2) Where an aggravating or mitigating factor identified in section 48 or section 39 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence...’

- [8] Section 49 of the misuse of Drugs Act reads as follows;

‘Mitigating factors (factors that support a reduction in sentence) for offences under this Act include;

- (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 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 prevention, investigation or prosecution of any other offence under this Act;
- (d) The absence of commercial element in the offence;
- (e) The presence of element of coercion, for example from a family member or employee;
- (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.’

[9] This Court also draws its attention to section 47(4) of the Misuse of Drugs Act which states as follows;

‘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 circumstances.’

Analysis and determination

[10] From the outset this court would like to expound on the principle of sentencing as laid down in decided cases. In the case of **Ponoo V/S Attorney General (2011) SLR**, the Court of Appeal held that;

‘Sentencing is an intrinsic judicial power which involves the human deliberation of the appropriate conviction to be given to the particular offender in the circumstances of the case. It is not a mere administration of a common formula standard or remedy.’

[11] In the case of **Savy v/s R (1976) SLR 54**, the Court held that;

‘In sentencing, the Court should consider the necessity of punishing crime, the deterrent effect on others of the appropriate punishment, and the need to protect the public from offences especially in at the hands of those entrusted with the enforcement of the law, the previous good character of the accused, the motive for the offence and the loss of usefulness to the state by a prison sentence.’

[12] In the case of **R V/S Aden (2011) SLR 41** the Court held that;

‘In sentencing, one relevant factor is the seriousness of the offence.’

[13] The case of **Njue v R (2016) SCCA 12, (at para 14)** set out the principles a court should consider when sentencing which includes public interest; the nature of the offence and the circumstances it was committed. The Court at the same time must consider whether there is a possibility of the offender to be reformed; the gravity of the offence; the prevalence of the offence; the damage caused; any mitigating factors; the age and previous records of the accused; the period spent in custody; and the accused’s cooperation with law enforcement agencies.

[14] It is trite law that sentencing is a discretion of the trial Court. In the case of **Suki V/S R SCA 10 of 2019**, prof Tibatemwa-Ekirikubinza JA, stated the following at paragraph 25 of the Judgment;

‘In exercising discretion to arrive at a sentence, the Judge should balance the mitigating factors with the aggravating factors and then consider the cumulative effect thereof. It may be that in the opinion of the Judge, the aggravating factors outweigh the mitigating factors even to the extent that the-would be mitigating factors have little or no effect on the sentence. In such circumstances, the factors cited in mitigation will necessarily recede into

the background. It is only if the mitigating factors carry sufficient weight to tip the scale in favour of the accused that a lenient sentence would be given.’

- [15] This Court has considered the above provisions of the law, the case laws cited by counsel for the accused and the mitigating factors put forth by counsel for the accused in the present matter as well as the probation report submitted by the probation services. I have considered the following mitigating factors put forth by Counsel for the accused. That the accused has pleaded guilty saving the precious time of the Court and he has shown remorse for having committed the offence as well as the fact that the accused is a first offender. That the accused is of a young age of 21 years old and has an 11 months old daughter which he maintains.
- [16] As for the version put forth by counsel for the accused in mitigation of which he has highlighted the manner in which the accused has committed the offence namely he has lent his friend 20,000 when he was going to India and that he was either negligent or reckless in this matter and had no intention nor mens rea. Since such version given in mitigation by counsel for the accused is inconsistent with that of the facts of the prosecution which was admitted in court by accused, I cannot consider it as a mitigating factor.
- [17] The facts as narrated by the prosecution and admitted by the accused are that further investigation revealed that the said controlled drugs were received by Raphael Pierre Louis from Dwain William. Digital extraction of phone belonging to Raphael Pierre Louis and the conversation between Raphael Pierre Louis, the 1st accused and Dwaine William demonstrates instructions and concerns from Dwain William to Raphael not to keep the controlled drug in an unsafe place so as not to misplace it. However I do consider as a mitigating factor that the accused may not have benefited from the transaction.
- [18] I have also taken into account the fact that there are no aggravating factors present in the present matter since the amount of class A drug is not more than 250 grams of a class A drug as provided for in terms of Section 7(4) of the Misuse of Drugs Act, 2016 being only with a Heroin (diamorphine) content of 60.18 grams.

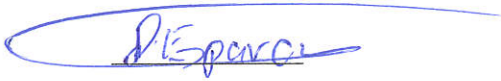
- [19] That being said, I also find that the offence is serious in nature since section 15(1) of the Misuse of Drugs Act, 2016 provides that a person who aids aid abet another person to commit an offence under this Act commits an offence and is liable to a punishment for the offence. Hence the prescribed sentence under the second schedule of the Act for the offence of aiding and abetting in the trafficking of a controlled drug is a maximum sentence of life imprisonment and a fine of SR 750,000. The recommended sentencing guidelines for such an offence is 8 to 12 years imprisonment.
- [20] The case law cited by counsel for the accused Mr. Juliette namely the case of the Republic V/S Denis Madeleine CO04/2023 whereby the accused was sentenced for a term of one year imprisonment suspended for three years and a fine of 30,000 rupees in default six months imprisonment where it concerned 62.92 grams of cocaine should be distinguished from the present case in view that the strong mitigating factors whereby the accused was suffering from chronic hypertension and diabetes which is not present in the present matter.
- [21] Counsel for the accused also submitted that the accused should receive the same sentence as the other accused in the present matter namely Raphael Pierre Louis which was sentenced to a term of 9 months imprisonment for the offence of possession of a controlled drug. This Court takes note that the other accused was convicted for the offence of possession of a controlled drug whereas the accused Dwain William is convicted for the offence of aiding and abetting in the trafficking of a controlled drug which is a higher offence. Secondly the mitigating factors present for the accused Raphael Pierre Louis is not present in respect to the accused which is now before the Court namely that he had cooperated entirely with law enforcement agencies such as if he did not do so there would have been no case against him nor the accused Dwain William which was a strong mitigating factor which is not present for the accused Dwain William who is now before the Court.
- [22] In view of the above, this Court is of the view that a custodial sentence is most appropriate in the circumstances. I therefore sentence the accused Dwain William to a term of 2 years imprisonment. In addition I also sentence the accused to a fine of 50,000 Rupees. The accused shall pay the said fine within a period of 6 months from the date that he finishes

serving his sentence in default of which the accused shall serve a term of 6 months imprisonment.

[23] Since there are no aggravating factors present in the instant matter, the accused is entitled to remission in accordance with the law.

[24] The accused has a right of Appeal within 30 days from the date of this sentence.

Signed, dated and delivered at Ile du Port on 09th July 2024.



D. Esparon Judge

