

SUPREME COURT OF SEYCHELLES

Reportable
CR 15/2024

In the matter between:

THE REPUBLIC

*(rep. by Mrs. Lasinglu Rongmei Benjamin
standing in for Ms. Ketlyn Marie)*

Prosecution

and

RANDY FLORINE

(rep. by Ms. Almeida)

Accused

Neutral Citation: *The Republic v Randy Florine* (CR 15/2024) (11th June 2024)

Before: Adeline j

Summary: Sentencing of an accused convicted for Drugs offences

Heard: (plea in mitigation) 23rd May 2024

Delivered: 11th June 2024

SENTENCE

Adeline J

[1] By way of an indictment dated 27th March 2024 pertaining to CB 245/03/24, the accused, one Randy Florine of Anse Aux Pins, Mahe was indicted before this Court with the following offences-,

Count 1

Statement of the offence

Possession of a Control Drug contrary to and punishable under Section 8(1) of the misuse of Drugs Act 2016 as specified in the Second Schedule of the said Act

Particulars of offence

Randy Florine, a 44 years-old docker of Anse Aux Pins, Mahe on the 19th March 2024, at Anse Aux Pins, was found in unlawful possession of a controlled drug, namely Diamorphine (Heroin) with a total net weight of 0.29 grams.

Count 2

Statement of offence

Possessions of Articles Intended to facilitate the use of Controlled Drugs contrary to and punishable under Section 8 (2) of the Misuse of Drugs Act 2016 as specified in the Second Scheduled of the said Act.

Particulars of offence

Randy Florine, a 44 year-old docker of Anse Aux Pins, Mahe on the 19th March 2024 at Anse Aux Pins, was found in possession of eight (8) homemade smoking pipe, nine (9) burnt razor blades, two (2) Abacete, four (4) burnt spoon, and five (5) knives with burnt blade with intent to facilitate the use of a Controlled Drug, namely, Heroin (Diamorphine).

Count 3

Statement of Offence

Use of Premises for the Use of a Controlled Drugs on a premises contrary to Section 11 (2) read with Section 21 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 11 (2) as specified in the Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of Offence

Randy Florine, a 44 year-old docker of Anse Aux Pins, Mahe on the 19th March 2024, permitted his residence at Anse Aux Pins, Mahe to be used for the purpose of the use of a Controlled Drug, namely, Heroin (Diamorphine), having been found in unlawful possession of these articles, eight (8) homemade smoking pipe, nine (9) burnt razor blades, two (2) Albacete, four (4) burnt spoons, and five (5) knives with burnt blade which raises the presumptions of having possessed the said articles to facilitate the use of Controlled Drugs namely Heroin (Diamorphine).

[2] On the 23rd May 2024, the accused, now a convict, pleaded guilty to all the three Counts and after admitting the facts pertaining to each count as narrated by the prosecution, he was accordingly convicted with the following offences-

1. 1 count of Possession of a Controlled Drug (Count No1)
2. 1 count of Possession of Articles Intended to Facilitate to the use of Control Drugs (Count No2) and
3. 1 count of use of Premises for the Use of Controlled Drugs on premises. (Count No3)

[3] In plea in mitigation, learned defence counsel submitted, that the court should exercise leniency when sentencing the accused/convict given that he is a first time offender who has pleaded guilty at the first available opportunity. Learned counsel also submitted, that the accused is remorseful for the crimes he has committed and seeks for forgiveness in view that he is the father of 4 children, three of whom are still minors and are dependent on him as the main bread winner in the family.

[4] Learned counsel for the accused/convict also submitted, that the accused/convict was a drugs dependent person who has detoxed to cure his drugs addiction and that he is presently no longer a heroin drug user. Learned counsel cited the case of Republic v/s Dahlin Joubert as an authority for the sentence that the accused/convict deserve for the offences he committed.

[5] It was the submission of learned counsel, that in the Joubert case (Supra), the accused/victim was convicted for the offence of trafficking in a class A drug, heroin, with a net weight of drugs of 40.25 grams, with a purity of 26.16 grams and yet the accused/convict was given suspended sentence.

[6] It was also the submission of learned counsel, that in the instant case, the amount of drugs (heroin) is only 0.29 grams, which learned counsel submitted, is very low in quantity. Learned counsel submitted, that the articles found in the possession of the accused/convict were used for the accused/convict own consumptions.

[7] In meting out the right sentence that would be appropriate to do justice in this case, I have taken into account the mitigating factors raised by learned counsel that work in favour of

exercising leniency in sentencing this accused/convict, particularly, the fact that the accused/convict is a first time offender, the fact that he pleaded guilty at the first available opportunity, and the fact that the drug is on the very low side.

I recognise the fact, however, that for our society to win the battle against drugs in this country, those who are prosecuted for drugs related offences and convicted, must be given a sentence that would deter them, and other persons from committing similar offence or offences. I am reminded of the principles of sentencing which in *Lawrence v Republic* [1990] SLR 47, the court said are deterrence, prevention, rehabilitation reformation and retribution, and of course, based on the facts of this case the element of proportionality.

[8] In that regard, although the court should not take into account public abhorrence and Public sentiments to these type of crimes, when sentencing a convict for drugs or related drugs offences in exercise of its sentencing discretion, it has to balance the interest of the accused and the interest of society.

[9] Therefore, the fundamental purpose of imposition of sentences is based on the principle that the accused/convict, must realise, that the crime committed by him has not only created a dent in his life, but also, a concavity in the social fabric. The purpose of a just punishment is designed so that it serves as a deterrent for the individual, and society should not also suffer from the commission of crime time and again. Having said that, the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct cannot be overlooked given that punishment ought always to fit the crime.

[10] I have also had regards to Section 49 of the Misuse of Drugs Act 2016, that spelt out the mitigating factors which the court has to consider to arrive at a just desert sentence, and these are-

(a) the offender's admission of the truth of the charges 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 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 the family Or employer

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

(g) the fact that the other person was involved in or directly harmed by the offence.

[11] Wherever, either of these factors has been worthy of consideration, I have taken it into consideration.

[12] Finally, taking all the relevant factors into consideration, I therefore sentence the accused/convict as follows-

(i) For the offence of Possession of a Control Drug (count 1) 1 year in prison suspended for 2 years on condition that during the two years he is not charge with any drugs related offences.

(ii) For the offence of Possession of Articles Intended to Facilitate to the use of Controlled Drug, 1 fine this accused/convict SCR 10,000 to be paid within six months from today, failing which the convict shall serve a term of imprisonment of 6 months as a default sentence.

(iii)For the offence of use of premises for the use of Control Drug on premises, I fine the accused/convict SCR 5,000 which must be paid within 3 months after payment of the fine of SCR 10,000 for the offence of Possession of Articles Intended to Facilitate the use of Controlled drug has been paid, failing which the convict shall serve a term of imprisonment of 3 months as a default sentence.

[13] The convict has 30 days to appeal to the court of appeal against the sentences imposed on him in this case.

Signed, dated and delivered at Ile du Port on 11th June 2024.

