

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram: F. MacGregor (PCA), M. Twomey (J.A), B. Renaud (J.A)]**

**Criminal Appeal SCA 22/2015**

**(Appeal from Supreme Court Decision Criminal Appeal No.77/2013)**

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Jules Labrosse

Appellant

Versus

The Republic

Respondent

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Heard: 01 August 2017

Counsel: Mr. Anthony Derjacques for the Appellant

Mr. Jayaraj Chinnasamy for the Respondent

Delivered: 11 August 2017

**JUDGMENT**

**B. Renaud (J.A)**

[1] The Appellant, a prison warden was convicted in the Magistrate's Court on 24<sup>th</sup> July, 2013 of the offence of possession of controlled drug contrary to Section 6(a) read with Section 26(1)(a) and punishable under Section 29(1) of the Misuse of Drug Act Cap 133 (MODA), on two counts, in case Criminal Side 01 of 2013.

[2] The particulars of the offence under the 1<sup>st</sup> count are that the Appellant at Montagne Posee Prison, on 22 December 2012 had in his possession 1.43 grams of heroin diamorphine, a controlled drug and under the 2<sup>nd</sup> count the Appellant had in his possession 20.3 grams of cannabis resin, a controlled drug.

[3] At the end of the trial the Appellant was found guilty on both counts by the Magistrate Court and on 24<sup>th</sup> July, 2013 and was convicted. The Appellant was sentenced on 12<sup>th</sup>

August, 2013 to a term of 6 years imprisonment on count 1 and to a term of 2 years imprisonment on count 2. The sentences were made to run concurrently which effectively means that the Appellant will serve 6 years imprisonment.

### **First Appeal**

- [4] The Appellant appealed to the Supreme Court against the said conviction and sentence on several grounds. The learned appellate Judge of the Supreme Court, in Cr. Side No. 77 of 2014, on 12<sup>th</sup> June, 2015 agreed with the learned Magistrate that the Appellant was a Prison Warden who had been in breach of his duties in attempting to smuggle controlled drug in the Prison. He dismissed the appeal and upheld the conviction and sentence imposed by the learned Magistrate.

### **Second Appeal**

- [5] The Appellant aggrieved by the decision of the Supreme Court given on the 12th June 2015 has now appealed to this Court against sentence only.

### **Ground of Appeal**

- [6] The Appellant has advanced one ground of appeal in that the Learned Appellate Judge erred in law in failing to hold and determine that the sentence of 6 years imprisonment for possession of a controlled drug, namely, 1.43 grammes of Heroin and 20.3 grammes of cannabis resin, was harsh and excessive in all the circumstances of the case and that further, this is wrong in principle.

### **The Law**

- [7] Although the Appellant was convicted under the Misuse of Drugs Act (20) (a) we are for the purpose of sentencing duty bound to take into consideration the sentences now imposed by the new Misuse of Drugs Act. **Sections 47(1); (2) and (5)** of Act No.5 of 2016 of the Misuse of Drugs Act stipulates as 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 regards to*

- a) The objectives of the Act;*
- b) The degree of control to which the relevant controlled drug is subject; and*

