

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO49/2016

[2016] SCSC

THE REPUBLIC

versus

MARC DAVE D'UNIENVILLE
Accused

Heard: 23 November 2016
Counsel: Mr. H. Kumar, Assistant Principal State Counsel for the Republic
Mr. T. Juliette for the accused
Delivered: 28 November 2016

SENTENCE

Vidot J

- [1] The Accused has pleaded guilty to one count of possession with intent to traffic in a controlled drug contrary to section 9(1) of the Misuse of Drugs Act 2016, read with section 19(1)(d)(ii) of the said Act and punishable under section 7(1) and the Second Schedule of the same said Act.
- [2] The particulars of the offence are that Marc Dave D'Unienville on the 29h July 2016 at Anse Possession, Praslin, was found in possession of a glass jar containing 44 pieces of dark substance each wrapped in cling film, having a total weight 41.825 grams of a

controlled drug namely; cannabis resin (hashish) which gives rise to a rebuttable presumption of having possessed the said controlled drugs with intent to traffic.

- [3] Following his plea of guilty the accused was accordingly convicted. In mitigation, Mr. A. Juliette, counsel for the accused pleaded court to exercise leniency of his client. He invited court to consider that the accused had pleaded guilty and therefore not wasted the court's precious time. He stated that the cannabis was for personal consumption and I note that the prosecution in relating the facts to court had stated that when the NDEA was conducting the search, the accused had said the same thing. He is a father of a 4 year and lives with his partner who is 3 months pregnant and expecting their second child. Mr. Juliette further mitigated that his client acknowledges he committed an offence but implores that he be given a second chance in life.
- [4] In praying for a non custodial sentence, Mr. Juliette further referred court to several recently decided cases which Learned counsel states supports his plea for leniency. These include; **R v Steven Lenclume CR82 of 2013** where a sentence of 6 months suspended for 2 years was meted out for possession of 39.2 grams of cannabis. In this case however, special consideration was given to the fact that the accused suffered from epilepsy. In **R v Steve Monthly 32 of 2015** a sentence of 2 years suspended for 2 years and a fine of SR12,500/- was imposed The was found to be trafficking in 629.5 grams of cannabis resin. In this case the special consideration was that the accused suffered from serious bone infection. In **R v Said Abdul Jabber CR33 of 2012**, the accused was found in possession of 30.2 grams of cannabis resin. The sentence was a term of imprisonment of 5 months and 3 weeks and a fine of SR25,000/-. In **R v Norris Lawrence CR78 of 2015**, the accused was fined SR15,000/- for possession of a class B drug.
- [5] I have given full and due consideration to the mitigation by Mr. Juliette. I also take note of sections 7(4) and 49 of the Misuse of Drugs Act 2016 and find that the offence is not aggravated in nature. I also take into account that cannabis resin is a class B drug. I also take note of the sentencing pattern in the above mentioned cases. I therefore proceed to sentence the accused to a term of 6 months imprisonment suspended for 18 months and to

a fine of SR23,000/- which shall be paid in full on or before the 15th March 2017 and in default to a term of 6 months imprisonment.

[6] Should the accused default in the payment of the fine imposed in part or in full by the given date, the prison term shall immediately and automatically be activated and he shall be arrested and he shall serve the prison term as above mentioned and if the fine has been paid in part only, such sum already paid shall be forfeited to the state and the accused shall not entitled to any reimbursement.

[7] If unsatisfied with the sentence the accused has a right of appeal which should be filed within 30 days from today.

Signed, dated and delivered at Ile du Port on 28 November 2016

M Vidot
Judge of the Supreme Court