

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 545
CO 89/2020

In the matter between:

THE REPUBLIC
(rep. by Esha Benoiton)

Republic

and

EWAN ROSE
(rep. by Danny Lucas)

Accused

Neutral Citation: *Republic v Rose* (CO 89/2020) [2021] SCSC 545 (20 August 2021).
Before: Burhan J
Summary: Trafficking in a controlled drug by possession with intent to traffic
Heard: 2nd August 2021
Delivered: 20 August 2021

ORDER

I proceed to sentence the accused to a term of four months imprisonment and on consideration of his financial difficulties I will not impose a fine.

SENTENCE

BURHAN J

[1] The accused Ewan Rose is charged with the following offence:

Count 1

Trafficking in a controlled drug, by virtue of being found in unlawful possession of controlled drug with intent to traffic, contrary to Section 9 (1) as read with Section 7 (1)

Section 19 (1) (d) of the Misuse of Drugs Act, 2016 (Act 5 of 2016) and punishable under Section 7 (1) and the Second Schedule of the Misuse of Drugs Act, 2016

Ewan Antoine Rose of La Passe, La Digue, on 30th November, 2020 at La Passe, La Digue was trafficking in a controlled drug by virtue of having being found in unlawful possession of a controlled drug namely Hashish (Cannabis Resin) having a net weight of 345 grams giving rise to a rebuttable presumption of having possessed the said controlled drug with intent to traffic.

- [2] The accused pleaded guilty to the aforementioned charge on the 21st of June 2021 and was convicted on his own plea of guilt.
- [3] At the request of learned Counsel Mr. Danny Lucas a probation report was called. The facts set out in the probation report indicate that the accused is 39 years of age. The accused is a first offender and has a two year old son. He has also a 12 year old son from a previous relationship. The accused had attended NYS (National Youth Service). He had thereafter joined the Industrial Training Institution (Post-Secondary Institution) for a period of one year and followed a Diploma course in painting and decorating which he had not completed. The accused had thereafter worked as a boat boy for three years. He thereafter ventured into the sea cucumber business as a fisherman and has been self-employed in the said business for the past five years.
- [4] It is clear from the report that the accused had the quantity of Class B controlled drug in his possession for the purpose of sale, to settle a monthly instalment of SCR 10,000 an outstanding instalment payment for a loan he had taken to purchase his boat. The probation report states that as he feared he would lose his boat and as he was unable to find the money to settle the loan, he had resorted to this type of business, the selling of controlled drugs. I am of the view that this is not an excuse for such conduct by the accused. The probation report recommends some form of punishment be imposed that will serve as a deterrent for such future criminal behaviour.
- [5] Learned Counsel M. Danny Lucas in mitigation submitted that the accused has saved the precious time of Court by pleading guilty at the very outset of the case and by doing so, he

has expressed remorse at the incident. Learned Counsel moved that a non-custodial term be imposed on the accused and as recommended by the probation, a suspended sentence be imposed. Learned Counsel also brought to the notice of Court that the accused has expressed remorse by accepting guilt of the offence. He had committed the offence out of financial desperation. He moved that Court give the convict a second chance.

[6] I observe that the accused is a first offender but I cannot condone his act of selling controlled drugs to innocent persons in order to settle his debt which was incurred for the purchase of a boat. I am inclined to disagree with learned Counsel for the accused that the probation has recommended a suspended sentence. The report mentions on page 4 that the *"He (the accused) is hoping to be offered a second chance and in favour of a non- custodial sentence to be imposed on him as punishment."* However the probation report thereafter clearly recommends *"some form of punishment that will serve as a deterrent from similar behaviour in the future."* This Court is of the view, considering the facts peculiar to this case that the imposition of a custodial term would act as a suitable deterrent to the accused from repeating such an offence.

[7] The recommended sentence for such an offence concerning a quantity of 250 to 1500 grams of a Class B controlled drug is a maximum of two years imprisonment and a fine. Considering the fact that the quantity is 345 grams and the circumstances set out in mitigation, I proceed to sentence the accused to a term of four months imprisonment and on consideration of his financial difficulties I will not impose a fine. Time spent in remand to count towards sentence,

[8] Right of appeal explained.

Signed, dated and delivered at Ile du Port on 20th August 2021


Burhan J