

SUPREME COURT OF SEYCHELLES

Reportable

CO 27/2024

In the matter between:

THE REPUBLIC

(represented by Mr. Alvin Marie)

Prosecution

versus

STEVEN ANTOINE DAVE HOAREAU

(represented by Mrs. Alexia Amesbury)

1st Accused

And

YANIC SAMUEL LEON

(represented by Mr. Joel Camille)

2nd Accused

And

SHAMIRA CHANG-WAYE

(represented by Mr. France Bonte)

3rd Accused

Neutral Citation: *Republic v Hoareau & ors* (CO27/2024) 19th March 2025

Before: Adeline J

Summary: Sentencing of the 3rd Accused for the offence of Possession of a Control Drug.

Heard: Plea, and plea mitigation 20th February 2025

Delivered: 19th March 2025

SENTENCE

Adeline j

- [1] By way of an amended charge dated 20th February 2025 pertaining to CB 59/04/2024 Beau Vallon Station, the 3rd Accused Shamira Chang-Waye, a 22 year old Human Resource Manager at Ferox Feed, Glacis, Mahe, Seychelles, was charged with one count of Possession of a Controlled Drug, contrary to Section 8(1) of the Misuse of Drugs Act, 2016 and punishable under the Second Schedule of the Misuse of Drug Act 2016 (count 6)
- [2] The particulars of the offence pertaining to count 6 as narrated in the charge sheet read as follows;
- “Shamira Chang-Waye, a 22 year old Human Resource Manager of Ferox Feed of Glacis, Mahe, Seychelles was in possession of a controlled drug namely, cannabis with a net weight of 11.20 grams, having been found at her residence at Glacis, Mahe, Seychelles.*
- [3] On the 20th February 2025, the 3rd accused, now a convict, pleaded guilty to 1 count of possession of a controlled drug, and after admitted the facts and circumstances of the offence as narrated the prosecution, the accused/convict was accordingly convicted.
- [4] The accused/convict is before this Court today for sentencing.
- [5] In plea in mitigation, learned Counsel for the Accused, Mr. France Bonte, submitted, that his client is a 22 year old first time young offender, and that it is not the custom of this Court to incarcerate a first time offender. Learned Counsel also submitted, that the quantity of the drug is very little, and that the drug was for personal use. Learned Counsel urged the Court to exercise leniency and not to impose a custodial sentence.

THE LAW AND SENTENCING UNDER MODA

- [6] The Court's approach to sentencing a person convicted of a drug offence under the Misuse of Drugs Act, 2016 (MODA) is guided by various statutory provisions in MODA. Section 8(1) of MODA reads;

"A person who possesses, purchases or uses a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule."

- [7] Section 20(1) (a) of MODA reads.

"20(1). A person who is proved to have had in his or her possession or custody or under his or her control, (a) anything containing a controlled drug, shall be presumed until the person proves the contrary to have possessed the control drug."

- [8] The maximum penalty prescribe under in the 2nd Schedule of MODA applicable to Section 8(1) of MODA, is; 15 years imprisonment plus a fine of SCR 300,000. The minimum custodial sentence is 5 years of imprisonment if the drug is a class B drug as in the instant case.

- [9] Part VI of MODA specifically provides for sentencing. Section 47(1) reads;

"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 regard to;

(a) The objective of the Act

(b) The degree of control to which the relevant controlled drug is subject, and

(c) The general objective of transparency and opportunity in sentencing.

- [10] Section 48 of MODA provides for aggravating factors that support a more severe sentence. They includes;

(a) the presence and degree of a commercial element in the offending, particularly, where the controlled drug have been imported into Seychelles.

(b) The involvement in the offence of an organised criminal group to which the offender belongs.

(c) The involvement of the offender in other offences facilitated by, or relating to the commission of the offence.

[11] Section 49 of MODA provides for the mitigating factors for the Court to take into consideration that support a reduction in the sentence for the offence. They include the following which are most relevant for the sentencing of the accused/convict in this case, notably;

“49 (a) The offenders admission of the truth of the charge 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 given 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)

(e) The absence of any commercial element in the offence.

(f) the absence of prior conviction or formal caution under the Act.”

[12] In meting out the right sentence that will do justice in this case, I have had to have regards to Section 7(4) of MODA, in that it is only when the weight in trafficking offence is over 250 grams that the Court should treat the offence as aggravated in nature. Otherwise, as in the instant case, it has to find the existence of aggravating factors under Section 48 of MODA.

[13] I am bound by the provisions of Section 47(2) of MODA that reads as follows;

“where an aggravating or mitigating factor identified in Section 48 or 49 applies to the circumstances of the offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence.

- [14] Having had regard to the law as discussed in the preceding paragraphs, as well as the facts and circumstances of this case, I have taken note of the fact, that the weight of the drugs found in the possession of the convict was a net weight of 11.20 grams and that the drug, cannabis, is a class B drug. Thus the weight of the drug is very little to treat the offence as aggravated in nature. Furthermore, there has been no evidence adduced before this Court of any of the aggravating factors under Section 48 of MODA.
- [15] To the contrary, there are few mitigating factors that falls within the provisions of Section 49 of MODA which the Court ought to take into account for a reduced sentence some of which have been raised in plea in mitigation by learned defence Counsel. In plea in mitigation, learned defence Counsel submitted, that the convict is a first time offender, that it has admitted the charge and pleaded guilty early, and that the quantity of the class B drug is very minimal. Other relevant mitigating factors under Section 49 of MODA that the Court ought to take into account in deciding the appropriate sentence include, amongst others, the fact that the convict is a first time offender with no prior convictions, and the absence of any commercial element in the offence.
- [16] I have also taken into account other matters raised by learned defence Counsel in plea in mitigation on behalf of the accused/convict, particularly learned Counsel’s plea for the Court to exercise leniency in sentencing the accused/convict, and not to impose a custodial sentence. It must also be stated, that this Court takes recognizance of the fact that by pleading guilty, the accused/convict has saved the Court’s valuable precious time and resources, and that must be taken into account in determining the appropriate sentence that will do justice to the case.
- [17] In fact, it is settled law, that a guilty plea at the earliest opportunity earns an accused/convict credit in respect of the possible sentence on conviction. The principle that a guilty plea

should have the effect of reducing a sentence is discussed in one of the most authoritative Criminal Law Practice Handbook, Blackstone's Criminal Law Practice. This principle is also supported by case law authority, notably, *Labiche v Republic* SCA1 (a) 2004LC 288, for example.

THE SENTENCE

[18] Within the backgrounds of the discussions of the law in the preceding paragraphs, and to some extent the facts and circumstances of which the accused/convict committed the offence of which it has been convicted, and in consideration of other matters raised by defence Counsel in plea in mitigation, I therefore sentence the accused/convict as follows;

(i) I sentence the accused/convict Shamira Chang-Waye, to a term of imprisonment of 6 months for the offence of Possession of a Control Drug, contrary to Section 8 (1) as read with Section 20 (1) (a) of the Misuse of Drugs Act, 2016 punishable under the Second Schedule of the Misuse of Drugs Act, 2016. By virtue of Section 282 of the Criminal Procedure Code, the 6 months term of imprisonment is suspended for 18 months as of today on conditional that during the 18 months the accused/convict is not convicted with any drugs offences.

[19] I also fine the accused/convict the sum of SCR 5000 which must be fully paid by latest 30th of April 2025 in default of which the accused/convict shall serve a default sentence of imprisonment of 4 months.

[20] The accused/convict has a right of appeal to the Court of Appeal against the sentence so imposed on it by this Court 30 days as of the date of this sentence.

Signed, dated and delivered at Ile du Port 19th March 2025.

Adeline J