

SUPREME COURT OF SEYCHELLES

Reportable

CO 52/2024

In the matter between

THE REPUBLIC
(rep. by Mrs. Denys)**Prosecution**

and

EARONN MARIO MARKUS HUMPHREY
(rep. by Mr. Revera)**Accused**

Neutral Citation: *The Republic vs Humphrey* (CO52/2024) (31 January 2025)**Before:** Judge Esparon**Summary:** Sentence**Heard:** 18th December 2024**Delivered:** 31st January 2025

ORDER

In respect to Count 2, the convict is sentenced to a term of 2 years' imprisonment suspended for a period of 2 years. In addition, the convict is further sentenced for the same to a fine of SCR 14,000. In default of the payment of the said fine, the convict shall serve a term of 6 months' imprisonment.

SENTENCE

- [1] The accused stands charged with the offence of cultivation in a controlled drug contrary to section 6(1) of the Misuse of Drugs Act, 2016 and in the alternative to count 1 the accused has been charged in Count 2 with the offence of possession of a controlled drug contrary to section 8(1) of the Misuse of Drugs Act, 2016.
- [2] The Accused Earonn Mario Markus Humphrey has pleaded guilty to count 2 which is an alternative Count to Count 1 namely for the offence of possession of a controlled drug.
- [3] The Court proceeded to convict the Accused person on his own guilty plea as to count 2 after the accused had admitted to all the facts of the prosecution case.

- [4] The particulars of the offence of Count 2 of which the accused has pleaded guilty and convicted of the same reads as follows;

‘Earonn Mario Markus Humprey N.I.N: 990-0268-1-1-94 of Quatre Borne, Takamaka, on the 10th March 2020, unlawfully had in his possession 31 plants of Cannabis on his farm at Takamaka, Mahe ranging in length from 6cm to 104 cm in contravention of the Misuse of Drugs Act, 2016.’

- [5] In mitigation, counsel for the accused put forth before the Court that the accused has pleaded guilty to the offence of possession of a controlled drug saving the precious time of the Court. That he is a father of a 2 year old daughter and the sole provider for her as well as his retired mother of 62 years old. He also stated that in order to help his grandmother which was suffering from abdominal cancer, he was advised by a group of friends that he should try cannabis roots and that was the sole reason why he had started planting cannabis plants in order to boil the roots and giving his grandmother to drink and that he does not consume cannabis himself and thereafter after his arrest he has stop planting cannabis plants. He is a farmer by profession and sells what he grows to STC.

- [6] The court has requested a probation report from the probation services which corroborated what counsel for the accused has stated in court. Furthermore, the probation report has highlighted that the accused has had a motor cycle accident sometime back and although he has recovered mostly, he is still having some health issues due to the said accident. The probation report has recommended that the court imposes a suspended sentence and a fine on the accused.

- [7] This Court notes that the offence of possession of a controlled drug of such a class B drug carries a maximum sentence of 10 years imprisonment and a fine of SR 200,000 in the event of conviction. The indicative minimum sentence is 5 years imprisonment for an aggravated offence and the recommended sentence is a custodial sentence of a maximum of 2 years’ imprisonment and a fine.

[8] At this stage, the Court has to draw its attention to section 47 of MODA which makes provision for the following;

“(1) in sentencing a person convicted of an offence under part of this Act, whether upon a guilty plea or following a trial, the Court shall have regard to;

- (a) the objectives of the Act
- (b) the degree of control to which the relevant control drug is subject; and
- (c) the general objectives of transparency or proportionality in sentencing.

(2) Where an aggravating or mitigating factor identified in section 48 or section 39 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence...”

[9] This Court further takes into account the mitigating factors advanced by Counsel for the accused as well as the probation report namely that the accused is a first offender and has pleaded guilty at the 1st reasonable opportunity so as not to waste the time of the Court. That he is a father of a 2 year old daughter and the sole provider for her and well as his retired mother of 62 years old. Furthermore, after his arrest he has stopped planting cannabis plants thereby showing remorse. However, this Court cannot condone the reasons given by the accused for planting cannabis plants in view of the fact that the accused has been convicted of a serious offence and such an excuse will lead to a bad example and thereby encouraging others to do the same whereby the law should act as a deterrent in such circumstances. I also take into account the fact that the accused is partially recovering from a motor cycle accident which occurred sometime back.

[10] I also note that the accused person has pleaded guilty for the offence of possession of a controlled drug namely in 31 plants of Cannabis on his farm at Takamaka, Mahe ranging in length from 6cm to 104 cm being a class B drug and not for the offence of cultivation of a controlled drug and the prosecution has not brought to the Court any aggravating factors in respect to the commission of the offence.

[11] This Court also draws its attention to section 47(4) of the Misused of Drugs Act which states as follows;

“In sentencing a person convicted of an offence under section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all circumstances”.

[12] I also take into consideration the following cases namely the Republic V/S Eric Loizeau criminal side 42/2018, the Republic v/s Damien Darley Rose CO 89/2019, the Republic V/S Ritty Rene CO 48/2018, the Republic V/S Antoine Servina CR. No. 94/2019, the Republic V/S Vincent Delpeche CO 67/2019 of which this Court notes that in all these cases which are similar to the present case, the Court has imposed a suspended sentence and a fine on the accused.

[13] In the case of the *Republic v/s Roy Rosalie* (CO07/2023) [2023] SCSC 294 (20 April 2023), this Court sentenced the accused to a term of 2 years’ imprisonment suspended for a period of 2 years and to a fine of SCR 10,000 in default of payment of the fine, the convict was to serve a term of 6 months’ imprisonment whereby the accused was found in the possession of 19 plants of Cannabis ranging from 30 cm to 123.

[14] In considering the mitigating factors as advanced by counsel for the accused, the probation services report as well as the above cases cited, this Court is of the view that a non-custodial sentence is appropriate as regards to the accused in the present case.

[15] I therefore proceed to sentence the convict in respect to count 2 to a term of 2 years’ imprisonment suspended for a period of 2 years.

[16] I further sentence the accused person as regards to count 2 to a fine of SCR 14,000.

[17] Time is given to the convict to pay the fine in monthly instalments of SCR 1000 of which he shall complete the payment of the said fine within 14 months from the date of this sentence. In default of the payment of the fine, the convict shall serve a term of 6 months’ imprisonment.

Signed, dated and delivered at Ile du Port on the 31st January 2025

Esparon J