

Leon Russel Francis v Public Prosecutor
[2014] SGHC 167

Case Number : Magistrate's Appeal No 21 of 2014
Decision Date : 27 August 2014
Tribunal/Court : High Court
Coram : Chao Hick Tin JA
Counsel Name(s) : Eugene Singarajah Thuraisingam and Jerrie Tan Qiu Lin (Eugene Thuraisingam) for the appellant; Goh Yi Ling and Zhou Yihong (Attorney-General's Chambers) for the respondent.
Parties : Leon Russel Francis — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Young offenders

27 August 2014

Chao Hick Tin JA:

Introduction

1 This was an appeal brought by Leon Russel Francis (“the Appellant”) against the decision of the District Judge in *Public Prosecutor v Leon Russel Francis* [2014] SGDC 98. The Appellant pleaded guilty to two charges, one related to drug possession and the other drug consumption under ss 8(a) and 8(b)(ii) respectively of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”). He was sentenced to a total of eight months’ imprisonment. The Appellant consented to a further charge of drug trafficking under s 5(1)(a) of the MDA to be taken into consideration for the purposes of sentencing. The Appellant brought the present appeal on the ground that the sentence of imprisonment imposed by the District Judge was manifestly excessive.

2 At the hearing on 2 July 2014, I allowed the appeal and substituted the prison term of eight months with a sentence of supervised probation for a period of 24 months. I now set out the full grounds for my decision.

Background facts

3 The Appellant was convicted of the following charges:

Charge	MDA Section	Offence	Punishment
DAC-14453-2013	Section 8(b)(ii) punishable under s 33(1)	Consumption of a cannabinol derivative	Maximum: 10 years’ imprisonment or \$20,000 fine or both
DAC-14454-2013	Section 8(a) punishable under s 33(1)	Possession of a cannabis mixture	Maximum: 10 years’ imprisonment or \$20,000 fine or both

4 The following charge was taken into consideration ("the TIC charge") during sentencing:

Charge	MDA Section	Offence	Punishment
DAC- 14452-2013	Section 5(1)(a) punishable under s 33(1)	Trafficking of cannabis mixture	Minimum: 5 years' imprisonment and 5 strokes of the cane Maximum: 20 years' imprisonment and 15 strokes of the cane

5 The Appellant was 21 years of age when he was convicted of the offences listed above at [3].

6 On 12 October 2012 at about 1pm, police officers raided the Appellant's residence in the presence of the Appellant's father as the Appellant was then not at home. One packet of vegetable matter was seized during the raid. Later that day, at about 3.40pm, the Appellant reported to Clementi Police Headquarters where he was arrested. The Appellant admitted to ownership of the seized packet.

7 The Appellant provided urine samples which were analysed and found to contain a cannabinol derivative, a specified drug under the MDA. The seized packet was also analysed and found to contain 0.11g of cannabis mixture.

The decision below

8 Before sentencing the Appellant, the District Judge called for a pre-sentence report to assess the Appellant's suitability for probation. The report recommended that the Appellant be placed on 24 months' supervised probation with the following conditions:

- (a) to remain indoors from 10pm to 6am;
- (b) to undergo regular urine testing; and
- (c) the Appellant's parents are to be bonded to ensure the Appellant's good behaviour.

9 In his written grounds of decision, the District Judge held that:

- (a) Young offenders should be accorded the opportunity for rehabilitation but rehabilitation did not operate as the dominant consideration in all instances. There were offences and circumstances grave enough to warrant the need for deterrence which might then displace rehabilitation as a primary concern.
- (b) The offences committed by the Appellant were grave as they involved the possession and consumption of drugs.
- (c) Probation might still be appropriate where the offence was a one-off transaction or where there was low culpability on the part of the accused. However, the present offences were not the Appellant's first brush with drugs. He was introduced to cannabis in 2011 and smoked it twice a week. Also, the Appellant had sold drugs to his college mates for monetary consideration (*ie*, the TIC charge).
- (d) Whilst the Appellant claimed that the drugs helped to relieve his discomfort and anxiety

arising from a medical condition, that medical condition had already been diagnosed and managed. There was no reason for him to resort to any form of drugs to cope with his condition. The Singapore Prison Service had affirmed that they had adequate means to provide for the Appellant's medical needs.

10 The District Judge therefore sentenced the Appellant to eight months' imprisonment for the possession charge and six months' imprisonment for the consumption charge. The imprisonment terms were ordered to run concurrently.

The parties' submissions

11 The main submissions of the Appellant on appeal were as follows:

(a) The Appellant was suffering from a genetic medical condition known as Ehlers-Danlos Syndrome Type IV ("EDS Type IV"). According to the medical evidence, this condition meant that the Appellant had a high risk of suffering a spontaneous rupture of his bowel, organs and blood vessels. Individuals suffering from this condition have an average life span of only 48 years.

(b) The present case was distinguishable from *Public Prosecutor v Adith s/o Sarvotham* [2014] SGHC 103 ("*Adith*") which was relied upon by the Prosecution ("the Respondent") and in which the High Court observed that a sentence of reformatory training was more appropriate than the probation sentence imposed by the District Judge:

(i) The prosecution in *Adith* proceeded with a charge of trafficking while the Respondent here did not proceed with the trafficking charge – it was, with the Appellant's consent, only taken into consideration for the purposes of sentencing.

(ii) The accused in *Adith* had committed a number of drug-related offences, including consumption, cultivation and trafficking. Furthermore, some of the offences were committed while the accused was on bail.

(c) The probation report had strongly recommended probation for the Appellant. It noted that the Appellant enjoyed strong familial support for his rehabilitation.

12 The main submissions of the Respondent were as follows:

(a) The principle of deterrence was paramount in the present case. The District Judge had properly considered all relevant facts and accorded them the appropriate weight. In particular, he did consider the probation report and the factors favouring rehabilitation but also noted the culpability of the Appellant and the gravity of the offences.

(b) The precedents in which probation had been awarded for young drug offenders were of little relevance to the present case because the offenders in those cases had already spent a period of time in remand or had been undergoing some structured rehabilitation programme.

(c) The mitigating factors of the Appellant's young age, medical condition and plea of guilt did not outweigh the need for deterrence.

My decision on the appropriate sentence

The relevant principles in sentencing a young drug offender

13 I was mindful of the competing sentencing considerations of deterrence and rehabilitation when deciding on the appropriate sentence for the Appellant, a young offender who had committed serious offences. I was also aware that the more serious the offence committed, the more likely that the principle of rehabilitation could be outweighed by other considerations such as deterrence and retribution. That said, as a starting point, rehabilitation is generally the dominant sentencing consideration when deciding on an appropriate sentence for a young offender aged 21 years and below (see *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Maurice*") at [21]):

... Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young "don't know any better" and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour. However, there is no doubt that some young people can be calculating in their offences. Hence the court will need to assess the facts in every case.

At this juncture, I would pause to underscore the unique characteristics of the probation order, which were alluded to by the Minister for Community Development in Parliament on 10 Nov 1993 during the Second Reading of the Probation of Offenders (Amendment) Bill (Bill 25 of 1993) (see *Singapore Parliamentary Debates, Official Report* (10 November 1993) vol 61 at col 932 (Yeo Cheow Tong, Minister for Community Development)):

[Young offenders placed on probation] will benefit from the personal care, guidance and supervision of a Probation Officer. It will give them the opportunity to turn over a new leaf, and become a responsible member of society.

14 While, as indicated, rehabilitation may be displaced by the need for deterrence where serious crimes have been committed, I would flag one other factor which is germane and that is "where the individual offender's capacity for rehabilitation is demonstrably high, this may outweigh the public policy concerns that are traditionally understood as militating against probation" (see *Public Prosecutor v Justin Heng Zheng Hao* [2012] SGDC 219 ("*Justin Heng*") at [13] and [15]).

15 In my judgment, the following considerations are relevant in determining a young drug offender's capacity for rehabilitation and the appropriate sentence (see *Justin Heng, Adith, Public Prosecutor v Jeremy Mathews Jay* [2009] SGDC 101, and *Public Prosecutor v Wong Jia Yi* [2003] SGDC 53):

- (a) the strength of familial support and the degree of supervision provided by the offender's family for his or her rehabilitation;
- (b) the frequency and intensity of the offender's drug-related activities;
- (c) the genuineness of remorse demonstrated by the offender; and
- (d) the presence of risk factors such as negative peers or bad habits.

Application of the considerations to the present case

16 On the facts at hand, the Appellant's offences of drug consumption and possession were undoubtedly serious. Deterrence was therefore a pertinent sentencing consideration in deciding the

appropriate sentence for the Appellant. This, however, should not be the end of the enquiry. Notwithstanding the need for deterrence on the present facts, I also had to consider whether the Appellant's capacity for rehabilitation was "demonstrably high" based on the factors in the preceding paragraph so as to displace the public policy concerns that militated against probation. If that were shown, probation would still be an appropriate sentencing option.

17 I first noted that the level of familial support for the Appellant's rehabilitation was undoubtedly strong. Although the Appellant's parents are divorced (the divorce was effected in 2007), they both showed care and concern for him. He also has a younger brother. From 2007 to 2009, the Appellant lived with his mother but he now resides with his father. According to the probation report, the Appellant's father shares a close relationship with the Appellant and spends time together with him "having meals, watching football and playing video games". However, I also noted that the report stated that the Appellant's father seemed to be unaware of the affairs of the Appellant, thereby giving him the opportunity to consume cannabis at home without being detected. That said, the father has indicated to the Probation Officer that he would henceforth monitor the Appellant more closely. Knowing his concern for the Appellant, I was satisfied that he would diligently do his part to ensure that the Appellant does not go back to his old ways.

18 The Appellant also appeared to share a close relationship with his mother and brother. After the Appellant moved in with his father, the mother has been meeting the Appellant once a week. The Appellant's brother, who lives with the Appellant's mother, meets the Appellant "almost daily" and shares a similar group of neighbourhood friends. Significantly, both parents have expressed their willingness to sign the good behaviour bond for the Appellant. The mother has also said that she would do her part and make the effort to call and talk to him more frequently. I had no reason to doubt her sincerity in wanting to supervise the Appellant more closely. In sum, the level of familial support enjoyed by the Appellant was similar to the strong and supportive familial environment in *Justin Heng* which was one of the reasons supporting the court's conclusion there that the offender's capacity for rehabilitation was high.

19 In relation to the Appellant's drug-related activities, he was a first-time offender although I was also mindful of the fact that he has been consuming cannabis since 2011 after it was introduced to him by a school friend at a house party. He has been smoking it two times a week at home before sleeping as "it helped him relax and eased the discomfort he felt from his colostomy bag". It was recorded in the probation report that he had read about the benefits of the drug online and wanted to obtain relief from the pain arising from his medical condition. I will return to examine the Appellant's justification for consuming drugs below (see [24]–[27]). In addition to consuming cannabis at home, the Appellant sold the excess cannabis he had to a school friend, though he did not profit monetarily from these transactions as he sold the cannabis at cost. Since his arrest in October 2012, the Appellant has ceased these activities.

20 Although the Appellant appeared to have a short history of consuming and selling cannabis, I was in general agreement with the observation in the probation report that the Appellant did not possess deep-seated criminal traits that would hinder his successful rehabilitation. Unlike the accused person in *Adith*, the Appellant did not commit a litany of drug offences nor did he commit further offences while out on bail.

21 This brings me to the third factor, *ie*, the genuineness of remorse demonstrated by the Appellant. To his credit, the Appellant has ceased all drug-related activity after his arrest in October 2012. He has also acknowledged his wrongdoing and expressed regret for his actions. The Appellant has expressed his willingness to abide by and accept all the conditions of probation imposed by the court, including regular urine testing. The probation report also noted that the Appellant was placed

on a trial curfew by the probation officer and was found to be home when the probation officer conducted an ad-hoc telephone check on 21 November 2013. At the hearing of this appeal, I was also informed by counsel for the Appellant, Mr Eugene Thuraisingam, that the Appellant has been abiding by the conditions of probation.

22 The Appellant's remorse and desire to rehabilitate could also be seen from the testimonials given by his current and former employers. The consistent theme in these testimonials was the serious and mature attitude the Appellant displayed towards his work. The testimonials also attested to the Appellant's diligence and good working attitude. Undoubtedly, these testimonials went some way in substantiating the Appellant's stated desire to turn over a new leaf.

23 As for the presence of risk factors, the Appellant did not appear to have any unhealthy habits or negative peers with whom he would hang out, apart from that school mate who first introduced cannabis to him at a house party in 2011. It was not entirely clear from the probation report whether the Appellant had ceased relations with that school mate. The reason the Appellant gave for continuing to consume cannabis, that "it helped him relax and eased the discomfort he felt from his colostomy bag", [\[note: 1\]](#) indicated to me that the Appellant continued to consume cannabis not because of the negative influence of his peers but because it helped to alleviate the discomfort that he experienced as a result of his medical condition.

Whether the Appellant's explanation for consuming cannabis was a relevant factor to be taken into account during sentencing

24 From the above, it would seem that the reason given by the Appellant for his cannabis consumption was not of the usual kind. As mentioned above at [11], he suffered from a serious genetic medical condition known as EDS Type IV. Because of this condition, the Appellant was left permanently dependent on a colostomy (stoma) bag which collects his intestinal waste.

25 I could not see any reason why I should not accept the Appellant's averment that at the time before his arrest he had consumed cannabis for the reasons stated in the probation report. Those reasons were not challenged or disputed by the Respondent and I was of the view that the Appellant's reasons for consuming cannabis formed part of the relevant factual matrix of this case. The present circumstances should be distinguished from the usual case where drugs are consumed for purely recreational or social reasons. Although the Appellant's medical justification alone did not lead inexorably to the conclusion that a compassionate sentence was appropriate, I did consider the Appellant's reasons for his consumption of cannabis as *one* of the relevant circumstances in this case, especially when viewed against the backdrop of the factors discussed above including the strong familial support for the Appellant's rehabilitation and his desire to change for the better. I would hasten to add that my consideration of the Appellant's circumstances here should be read subject to the following two qualifications.

26 First, I would caution against any reliance on this case in the future for its precedential value because the present circumstances here were indeed exceptional in that the Appellant suffers from a rare genetic medical condition which causes him discomfort and anxiety. The circumstances in this case were also exceptional in relation to the strength of familial support which the Appellant enjoyed for his rehabilitation, his genuine remorse for the offences which he had committed and his commendable attitude and diligence towards his work endeavours.

27 Second, I would emphasise that I am in no way condoning the consumption of drugs for the relief of pain or discomfort arising from an existing medical condition. There are proper legal avenues for drugs to be administered or consumed for medical purposes. Persons who contravene the

provisions of the MDA must be prepared to face the full brunt of the law. At the end of the day, each case would have to be assessed on its merits as to the proper sentence.

Other sentencing precedents cited by the Respondent

28 The Respondent submitted that the imprisonment sentence imposed by the District Judge was not manifestly excessive and cited several cases where imprisonment sentences of between six to 12 months were handed down. However, the ages of the accused persons in those cases ranged from 24 years to 36 years. These cases were therefore not truly comparables and were not of direct relevance to the facts at hand. I should add that the Appellant was a young, first-time offender and, bearing in mind that his chances of being rehabilitated were good, the corrupt influence of a prison environment would certainly be detrimental to his rehabilitation and becoming a law-abiding member of society (see *Maurice* at [21] cited above at [13]).

Conclusion

29 For the reasons set out above, I allowed the appeal and substituted the imprisonment terms imposed by the District Judge with a sentence of 24 months' supervised probation with the following additional conditions (apart from the standard requirements found in Form P O 2 of the Schedule to the Probation of Offenders Rules (Cap 252, R 1, 1990 Rev Ed)):

- (a) the Appellant shall remain indoors from 10pm to 6am unless otherwise varied by the Probation Services Branch, in accordance with the guidelines approved by the court;
- (b) the Appellant shall undergo regular urine tests; and
- (c) the Appellant's parents shall execute a bond of \$5,000 to ensure his good behaviour.

[\[note: 1\]](#) ROP at p 142.

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