

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 28TH MARCH, 2023

SUIT NO. D18/01/23

THE REPUBLIC

VRS

BRIGHT BRONYA AND ANOTHER

JUDGMENT

The accused person is before this Court on a charge of unlawful possession of narcotic plants for use, contrary to *Section 41 (2) of the Narcotics Control Commission Act, 2020. (Act 1019)*.

The particulars of offence are that on the 3rd day of July 2022 at about 14:51 hours, at Prampram in the Tema Metropolis and within the jurisdiction of this court, he did have in his possession a quantity of plant material in a polythene bag that tested positive for delta-9-tetrahydrocannabinol, cannabinal, and cannabidiol all active ingredient in cannabis with gross weight volume 38.92g without lawful authority.

The brief facts of the case according to prosecution are that on the 3rd July 2022 at 14:51 hours while Chief Inspector Bernard Amuzu in charge six men all from National Highway Patrol Unit, HQ Accra on board S/Vehicle No. GP2577 were conducting a stop and search on the Accra Aflao motor road in front of the Central University, they stopped a Toyota Hiace passenger vehicle with registration No. GX 3990-20 driven by

one Eric from Accra heading towards Aflao direction with passengers on board including accused person Bright Bronya.

That a search was conducted on accused Bright Bronya who was in possession of a black polythene bag containing a quantity of dried plant material narcotic drug was found on him. He was arrested and when questioned, he told the police the substance belongs to accused Emmanuel Issaka. He led the police to skyline quarry site and pointed accused Emmanuel Issaka to the police.

Accused Emmanuel Issaka was arrested and a search was conducted on him and revealed a partially smoked wrap of plant material narcotic drug. After the exhibits were sent to the police forensic science laboratory, Accra the result tested positive for delta-9-tetrahydrocannabinol, cannabinol and cannabidiol all active ingredient in cannabis with gross weight volume 38.92g and 13.90g. Accused persons were subsequently charged with the offence and put before this honorable court.

The accused person elected to speak twi as his language of preference. He indicated that although he had a lawyer, he wanted the court to take his plea in the absence of his lawyer. His plea was taken and he pleaded guilty simpliciter.

In order to ensure that his plea of guilt was voluntary and that he understood the plea, I proceeded to ask him these questions.

BY COURT: A1, how are you doing?

A1: I am doing well, please.

BY COURT: How old are you?

A1: *About 21 or 22 years, but I do not know my exact age.*

BY COURT: *Are you educated and if so, to what level?*

A1: *Yes, I got to primary 4.*

BY COURT: *Do you know where you are and do you understand the court proceedings?*

A1: *We are in court, and I understand the court proceedings so far.*

BY COURT: *Without prejudice, do you or have you ever suffered from any mental derangement?*

A1: *No. However, I suffer from fits sometimes.*

BY COURT: *Do you or have you ever administered any narcotic substance?*

A1: *Yes, where I work has a lot of dust and so in order not to suffer from any fit or epilepsy, I boil a little and drink it as tea.*

BY COURT: *Was this prescribed by a doctor?*

A1: *No, My Lord. It was done in the house for me to see.*

BY COURT: *You have pleaded guilty simpliciter to possession of narcotics substance for use. Do you understand what it means to plead guilty?*

A1: *It was not in my pocket when the police arrested me. It was in the polythene bag and I was holding it, I had possession of same.*

BY COURT: *Is your plea of guilt voluntary?*

A1: *It is voluntary. Nobody forced me to say I am guilty.*

BY COURT: *Has anyone including the prosecutors, the investigator, court staff, your own family or A2, or anyone for that matter induced you to plead guilty either by means of a threat of duress or duress itself or the promise of a gift or reward for your plea of guilty?*

A1: *No. No one has induced me or told me anything.*

BY COURT: Has anyone including myself, the court staff, the staff at the registry, the prosecutors, investigator, police, or anyone including a lawyer demanded for and or obtained from you any property including money for the purpose of handing same over to for you to receive a lighter sentence for your plea of guilty?

A1: No, please.

BY COURT: Do you agree to the facts read and explained to you?

A1: Yes, it is what happened.

Being convinced that the accused person understood the charge, was compos mentis and had pleaded guilty voluntarily, I proceeded to convict him on his own plea.

PRE SENTENCING

According to prosecution, the convict is not known. In mitigation, the convict had this to say "I plead with the court to have mercy on me and use this to caution me. I have a daughter. I do not know her age. The mother and child live in my father's house and so when I go home, from work, I am with them".

SENTENCING

I sentenced the convict to a fine of two hundred and fifty (250) penalty units to be paid by 28th February 2023. In default, he was to serve a three (3) month terms of imprisonment. He was also to enter into a bond of self-recognizance to be of good behavior and to keep the peace for a period of 12 months. In default, he would serve a 2 month term of imprisonment.

I reserved my reasons to today. Per the second schedule to *Act 1019*, the punishment upon conviction for use of a narcotic substance is two hundred (200) to five hundred (500) penalty unit in default, a term of imprisonment not exceeding 5 years.

Kpegah J. (as he then was) in the case of *Impraim v. The Republic [1991] 2 GLR 39-47* stated that in considering the sentence to be given to an accused either upon first trial or during appeal, the courts had to take into consideration ‘the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.’

The second schedule of the *Narcotic Control Commission Act, 2020 (Act 1019)* provides that upon conviction for the offence of possession of a narcotic substance where the said substance was for personal use, the sentence is a fine of not less than 200 penalty units and not more than 500 penalty units. In default, the court may sentence the convict to a term of imprisonment not exceeding five years.

The convict is a first time offender as indicated by prosecution. The general position in applying the reformatory element of the criminal justice system, is that unless mandated by statute, the courts in considering an appropriate sentence, should consider a non custodial sentence for a first time offender.

According to *Taylor J* (as he then was) in the case of *Haruna v. The Republic [1980] GLR 189-192* “when young men (such as the appellant) have had their first brush with the law, it was essential in the interest of the reformatory element in criminal justice that

they be not sent to prison unless a prison sentence was a mandatory legal requirement. If a prison sentence was not mandatory, then as a general proposition, unless there were special circumstances calling for a custodial sentence, the courts must avoid incarcerating young offenders”.

Convict is between twenty-one (21) to twenty-two (22) years and falls within the category of a young man who has had his first brush with the law.

Convict also pleaded guilty at the earliest possible stage i.e the first date of arraignment. He appears quite remorseful. That he is willing to admit his guilt and has shown remorse for same means that he is unlikely to repeat the offence; all things being equal.

Although he has no medical report or authorization for use by the Minister, he indicates that he boils the narcotic substance for medicinal use. He is a father as well.

Hitherto to the enactment of *Act 1019*, the punishment for unlawful possession of narcotic drugs even where the court found that it was for use was a mandatory term of imprisonment and a fine. The fact that the lawmaker has reduced the punishment for the offence drastically to a fine and a custodial sentence only in default of the payment of the fine in the New Act manifests an intention not to incarcerate offenders.

It is upon these considerations that I sentenced the convict to a fine of two hundred and fifty (250) penalty units in default, a three (3) month term of imprisonment and also for him to enter into a self recognizance bond to keep the peace and be of good behavior for a period of twelve months or in default, a two month term of imprisonment.

**H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)**

ASP STELLA ODAME FOR THE REPUBLIC