

CRIMINAL COURT

HON. MR. JUSTICE DR. ANTONIO MIZZI LL.D.

BILL OF INDICTMENT No. 4/2014

THE REPUBLIC OF MALTA

Versus

Eddy Favour Imeh

[holder of Nigerian passport no. AO4182969]

Today, the twenty sixth day of September, 2016

The Court,

Having seen the bill of indictment no. 4/2014 against the accused Eddy Favour Imeh wherein he was charged with :

After the Attorney General premised in the first Count of the Bill of Indictment that on the fifth (5) August of the year two thousand and thirteen (2013), Drug Squad police were informed by customs officials at the Malta International Airport that a Nigerian National, namely the accused, had just arrived in Malta from Brussels on Airmalta flight KM421 and after being questioned and searched by the customs officials and drugs squad police, was suspected of carrying illegal drugs as a body packer.

That it transpired from the investigations that on the fifth (5) August of the year two thousand and thirteen (2013) and during preceding weeks, the accused Eddy Favour Imeh, decided to start illegally trafficking in cocaine. The accused had conspired with other persons overseas to body-pack the drugs concerned so as to pass on the illegal substance to another individual upon his arrival in Malta further to instructions which he would receive upon his arrival. The accused would receive a considerable amount of money for such service rendered specifically thirty six Euro (€36) for every capsule carried. In execution of this conspired plan, the accused Eddy Favour Imeh was instructed to swallow over a hundred (100) capsules consisting of cocaine before travelling to Malta on the fifth (5) August of the year two thousand and thirteen (2013) with the intention to deal in the drug carried as planned. Effectively the accused only managed to swallow a total of forty six capsules (46) containing the said substance having the same will, knowledge and intent. Fortunately the accused was arrested by the police on the date of his arrival that is on the fifth (5) August of the year two thousand and thirteen (2013) in the abovementioned circumstances and after being escorted to Mater Dei hospital where the accused consented to have his stomach x-rayed it transpired that he was indeed packing the said capsules which pursuant to the necessary medical interventions were excreted by the accused and passed onto the police for onward investigation.

That following the necessary medical intervention, pursuant to the necessary analysis carried out by forensic experts, it resulted that the capsules swallowed consisted of cocaine in the aggregate amount of five hundred and eighty eight point three grams (588.03grams), which drug is considered as an illegal substance in accordance with our Law, and which substance found in the person of the accused had a purity level of forty three percent (43%), carrying the total street value of thirty seven thousand five hundred and four Euro and fifty five cents (€37,504.55).

By committing the abovementioned acts with criminal intent, the accused Eddy Favour Imeh rendered himself guilty of conspiracy to trafficking in dangerous drugs (cocaine) in

breach of the provisions of the Dangerous Drugs Ordinance (chapter 101 of the Laws of Malta), or of promoting, constituting, organising or financing the conspiracy.

Wherefore, the Attorney General, in his capacity, accuses Eddy Favour Imeh of having on the 5th August 2013 and in preceding weeks, of being guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy.; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A)(1B) (2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

After the Attorney General premised in the second Count of the Bill of Indictment that owing to the nature of the circumstances which took place on the fifth (5) August of the year two thousand and thirteen (2013) and during the preceding weeks, as indicated in the first Count of this Bill of Indictment, as well as on the basis of an admission of the accused himself, it transpired that the accused wilfully and knowingly travelled to Malta from Brussels by air, whilst carrying throughout the whole trip, an illegal drug which later on was analysed as cocaine and which substance is illegal in accordance with our law. The accused gave his full consent to taking the flight concerned, whilst being fully aware of the purpose and the contents of the numerous capsules which he had swallowed and which he was body-packing so as to bring same to Malta. Effectively if the customs officials and the Drug Squad Police failed to notice the accused, the contents of these

capsules would have been transferred to third parties in Malta and would have likely been trafficked for financial gain.

The accused was not in possession of any licence or authorisation issued under the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), which authorised or permitted in any way the importation of the dangerous drug concerned by the accused.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Eddy Favour Imeh was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Eddy Favour Imeh rendered himself guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

Wherefore, the Attorney General, in his capacity, accuses Eddy Favour Imeh of having on the 5th August 2013 and in preceding weeks, of being guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 10(1), 12, 14, 15(A), 20, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), and 26 of the Dangerous

Drugs Ordinance and regulation 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

After the Attorney General premised in the third and final Count of the Bill of Indictment that having imported on the fifth (5) August of the year two thousand and thirteen (2013) into Malta, the dangerous drug cocaine in breach of the provisions of Chapter 101 of the Laws of Malta, as described under the first and second count of this Bill of Indictment, Eddy Favour Imeh, consequent to the suspicions which his behaviour raised to Police and customs officials, was physically and personally searched and X-rayed and forty six (46) capsules containing an aggregate of five hundred and eighty eight point three grams (588.03grams) of cocaine, were found in his stomach, and which substance carries the total street value of thirty seven thousand five hundred and four Euro and fifty five cents (€37,504.55). The accused himself admitted that these drugs were intended for trafficking which amount in itself is indicative that the illegal substance was too great to be intended merely for personal use.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Eddy Favour Imeh was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Eddy Favour Imeh rendered himself guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply in that such possession was not for the exclusive use of the offender.

Wherefore, the Attorney General, in his capacity, accuses Eddy Favour Imeh of having on the 5th August 2013 and in preceding weeks, of being guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply same in that such possession was not for the exclusive use of the offender; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen the joint application filed by the Attorney General and the accused on the fifteenth day of July, 2016 whereby, after declaring that in the event that the accused admits to the charge proffered against him in the bill of indictment, the punishment to be awarded by this same Honorable Court, will consist of a term of imprisonment of seven (7) years and the imposition of a fine of five thousand euro (€5000) together with the other sanctions and consequences that are mandatorily prescribed by Law upon conviction in terms of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, including the confiscation of any monies and other movable and immovable property of the accused in accordance to law.

Having seen that in the sitting of the twenty sixth day of September, 2016 the accused, in reply to the question as to whether he was guilty or not guilty of all the charges preferred against him under the counts of the Bill of Indictment, stated that he was pleading guilty thereto;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed him a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused, after being granted such a time, persisted in his statement of admission of guilt;

Now therefore declares Eddy Favour Imeh guilty of the only count in the Bill of Indictment, namely of having:-

1. on the 5th August 2013 and in preceding weeks, of being guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy.
2. on the 5th August 2013 and in preceding weeks, of being guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.
3. on the 5th August 2013 and in preceding weeks, of being guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession

authorization granted in pursuance of the said law, and with intent to supply same in that such possession was not for the exclusive use of the offender.

Having considered local and foreign case law regarding a reduction in the punishment when the accused registers an early guilty plea, thereby avoiding useless work and expenses for the administration of justice (Vide “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, Criminal Court, [24.2.1997] ; “Il-Pulizija vs. Emmanuel Testa”, Court of Criminal Appeal, [7.7.2002] and BLACKSTONE’S CRIMINAL PRACTICE, (Blackstone Press Limited – 2001 edit.);

As was held by the Court of Criminal Appeal in its judgement in the case “Ir-Repubblika ta’ Malta vs. Mario Camilleri” [5.7.2002], an early guilty plea does not always necessarily and as of right entitle the offender to a reduction in the punishment.

The general rules which should guide the Courts in cases of early guilty pleas were outlined by the Court of Criminal Appeal in its preliminary judgement in the case : “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, [24.2.1997]; and by the Court of Criminal Appeal in its judgement “Il-Pulizija vs. Emmanuel Testa”, [17.7.2002]. In the latter judgement that Court had quoted from Blackstone’s Criminal Practice, (Blackstone Press Limited – 2001 edit. ecc.) :-

“Although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established, the extent of the appropriate “discount” has never been fixed. In Buffery ([1992] 14 Cr. App. R. (S) 511) Lord Taylor CJ indicated that “something in the order of one-third would very often be an appropriate discount”, but much depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount the court may have regard to the strength of the case against the offender. An offender who voluntarily surrenders himself to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount. (Hoult (1990) 12 Cr. App. R. (S) 180; Claydon (1993) 15 Cr. App. R. (S) 526) and so may an offender who , as well as pleading guilty himself , has given

evidence against a co-accused (Wood [1997] 1 Cr. App. R. (S) 347) and/or given significant help to the authorities (Guy [1992] 2 Cr. App. R. (S) 24). Where an offender has been caught red handed and a guilty plea is inevitable, any discount may be reduced or lost (Morris [1998] 10 Cr. App. R. (S) 216; Landy [1995] 16 Cr. App. R. (S) 908) . Occasionally the discount may be refused or reduced for other reasons, such as where the accused has delayed his plea in an attempt to secure a tactical advantage (Hollington [1985] 85 Cr. App. R. 281; Okee [1998] 2 Cr. App. R. (S) 199.) Similarly , some or all of the discount may be lost where the offender pleads guilty but adduces a version of the facts at odds with that put forward by the prosecution , requiring the court to conduct an inquiry into the facts (Williams [1990] 12 Cr. App. R. (S) 415.) The leading case in this area is Costen [1989] 11 Cr. App. R. (S) 182 , where the Court of Appeal confirmed that the discount may be lost in any of the following circumstances : (i) where the protection of the public made it necessary that a long sentence, possibly the maximum sentence, be passed; (ii) cases of ‘tactical plea’ , where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence, and (iii) where the offender has been caught red-handed and a plea of guilty was practically certain

Having seen articles 9, 10(1), 12, 14, 15A, 20, 22(1)(a)(f)(1A)(1B) (2)(a)(i) (3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance (Chap.101); Regulation 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (L.N. 292/1939) and of articles 23 and 533 of the Criminal Code (Cap. 9 of the Laws of Malta).

Now, therefore, condemns the said Eddy Favour Imeh to a term of imprisonment of seven years, and to the payment of a fine (multa) of five thousand five hundred Euro (€5,000), which fine (multa) shall be converted into a further term of imprisonment according to Law, in default of payment within fifteen days ;

Furthermore condemns him to pay the sum of one thousand and sixty seven Euro and eighty seven cents (€1067.87c) being the sum total of the expenses incurred in the

appointment of Court Experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Should this sum not be paid within fifteen days, then it should be converted into a prison term in accordance with the law.

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other movable and immovable property belonging to the said Eddy Favour Imeh .

And finally orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out as soon as possible by the Assistant Registrar under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that the said drugs are required in evidence against third parties.

(sgd) Antonio Mizzi
Judge

Brian Avellino
Deputy Registrar