



THE COURT OF CRIMINAL APPEAL

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

Appeal number - 1/2020

The Police

vs

XXXXX

Sitting of the 10th June 2020

The Court,

1. This is an appeal from a judgment delivered by the Court of Magistrates (Malta) on the 2nd January 2020 against XXXXX, holder of a Maltese identity card number XXXXX, who was charged with having, on the 30th December 2019 and 31st December 2019 inside XXXXXXXXXXXX:
 - i. By his course of conduct caused his wife XX and his children to fear that violence will be used against them or their property or against the person or property of any of their ascendants;
 - ii. Wilfully committed any spoil, damage or injury to or upon any movable or immovable property when he caused damage to an

- internal door to the detriment of XX and/or other person which damage does not exceed two thousand five hundred euro (€2500);
- iii. Reviled, or threatened, or caused a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, mainly Inspector Ransley, PC127 and PC603.

The Court was also requested that in case of guilt, it were to apply the provisions of article 382A, 383 and 412C of the Criminal Code in order to provide for the security of XX and his children. The Court was also requested to issue a treatment order against XXXXX in accordance with article 412D of the Criminal Code.

2. By means of the said judgment, the Court of Magistrates (Malta), heard the accused register a plea of guilt. After that it heard the submissions of the parties with regards to the punishment that was to be meted out, the Court found the accused guilty as charged and imposed a fine of eight hundred euro (€800) and placed him under a probation order for a period of three years while it issued a protection order in favour of XX as well as XXX and XXXX XXXXXXXX in terms of a decree that was attached to the judgment. In terms of this protection order the appellant was prohibited from speaking or communicating with XX, XXX and XXXX XXXXXXXX and that he had to have access to said XXX and XXXX XXXXXXXX only as dictated by a Court or through his probation officer and was not to be aggressive towards them for a period of three years. The appellant was also prohibited from entering any premises where XX, XXX and XXXX XXXXXXXX resided. It also ordered a ban on the publication of the names of the accused due to the minor children being involved.

3. XXXXX filed an appeal against this judgment whereby he requested this Court to **vary** the said judgment by confirming that part where, upon the applicant's own admission, it found the appellant guilty of all charges and to vary it by giving a punishment that was more equitable based on the facts and circumstances of the case.

Considers the following: -

4. That during the hearing of this appeal, Defence Counsel pointed out that the *parte civile*, XX was requesting the Court to be able to testify in this case and this in view of certain important developments that took place after that this judgment was pronounced. Defence Counsel informed the Court that the appellant was taking steps in order for him to start attending a specialised alcoholism rehabilitation. Said Counsel noted also that during the sittings before the Court of Magistrates, *parte civile* XX was not requested to testify and therefore the Court was not informed that XX did not wish to have this protection order in place. Counsel reiterated that both the appellant as well as XXXXXXXX were interested in having this protection order removed since this was prejudicial to the interests of their minor children who were being deprived from access to their father, the appellant.
5. The Court heard the testimony of XX, who confirmed the request of the appellant and further added that this was *their appeal* to this Court in order to have the protection order lifted in the best interests of their minor children. In order to establish whether the *parte civile*

was aware of the consequences of this request, the Court asked XXXXXXXX whether she was lodging this request freely or whether she was being pressured so to do. XXXXXXXX replied that she was lodging this request freely and that she was not being pressured in any way, claiming that her request was free and deliberate, made in the best children of her family and minor children. She was not consulted before the issue of this protection order.

6. The Attorney General replied that this protection order was issued by the Court of Magistrates in view of the plea of guilt registered by the appellant before that Court. The evidence in the records of the proceedings showed that this was a domestic violence case which the Court decided to punish with a very lenient sentence that was even below the statutory minimum.¹ The Attorney General stressed that the protection order was issued in terms of law and ought not be removed.

Considers as follows: -

7. First of all, this Court notes that in passing judgment, the Court of Magistrates did not strictly adhere to the provisions of article 382 of the Criminal Code, given that while stating the facts of which the accused was found guilty and awarding punishment, it failed to quote the articles of the Criminal Code or of any other law creating the offence. According to Maltese case law, this is tantamount to a

¹ Even though prompted by the Court, the Attorney General replied that no appeal had been filed from this punishment, despite this declaration.

breach of a substantive formality that leads to the nullity of the judgment of the Court of Magistrates. Consequently this Court declares that judgment of the Court of Magistrates as null and void.

8. Given the circumstances of this case, not least the fact that the appellant had registered a plea of guilt before the Court of Magistrates and also the fact that this Court heard the testimony of the *parte civile* claiming in that in this particular case there was no reason for the issue of a protection order and that its issue would be counter-productive to the interests of her family, the Court after having seen the provisions of article 428(3) of the Criminal Code, proceeds with the determination of the case.

Considers as follows : -

9. The appellant had lodged a plea of guilt before the Court of Magistrates, which plea was duly re-iterated after that Court observed the necessary formalities. This Court is therefore proceeding to determine the punishment that ought to be meted out against him.
10. In the statement released to the Police which is found at folio 11 of the records, the appellant clearly admitted that he had alcohol and cocaine addiction. He admitted that on the day of the incidents he had been drinking alcohol.

11. From the Police NPS reports it transpires that the first incident took place on the 31st December at around 00:55. Appellant was at the place of residence of XX. He had drunken alcohol earlier on. Because of this, and his addiction history, XXXXXXXX was feeling unsafe and so she locked herself in the spare bedroom with her minor children. She was afraid of the appellant, being in that state. However her reaction prompted the appellant to react, aggressively, by kicking the locked spare bedroom door out of anger, causing damages to this door.
12. The Police repaired on site. When XX was asked whether the appellant had physically assaulted her or in any way threatened or insulted her, she replied in the negative. The Police found the appellant in bed and after being woken up, he was questioned and agreed to leave the premises so as to ensure that XX felt safe with the minor children.
13. However, hours later, in the evening of the 31st December 2019, another incident took place between the appellant and the *parte civile* XX. At around 21:15 appellant returned back to XX's apartment and he tried to move in. However the entrance door was locked and XXXXXXXX would not open. Appellant tried to force the door open. The Police repaired on site. The appellant claimed that he resided in that apartment, and that he had no where else to go. Appellant refused to leave the premises.
14. In the meantime XX was spoken to by the Police. She stated that earlier on during the night she had requested Police assistance on

account of the incident where the appellant broke a glass pane of the spare bedroom door while she had locked herself in the said room with her two minor children as she was afraid of the appellant who was drunk. XXXXXXXX claimed that she was afraid of the appellant. In the meantime, the appellant refused to leave the premises.

15.The Police proceeded with the arrest of the appellant, who was taken to the Police General Headquarters lock up. On his way there, the appellant addressed Police Inspector Jonathan Ransley, PC 127 and PC 603 using the phrase “fuck you”.

16.This Court made reference to the statement released by the appellant as well as the Police NPS reports in order to put this case into context. Clearly the accused has an alcohol abuse problem. Defence Counsel claims that the appellant was willing to start addressing this problem. The Court deems this to be in his best interests and in the best interest of his family.

17.Furthermore the crimes that he pleaded guilty for are :

- i. Fear of violence according to article 251B of the Criminal Code that carries a punishment of imprisonment between three and six months or a fine from €4685 to €11,646.87 or both such imprisonment and fine;
- ii. Wilful damage to property in terms of article 325(1)(c) of the Criminal Code. Given that the exact amount of damages

caused were not proven by the *parte civile* and given that from the evidence available, the damage was caused to a glass pane of the spare bedroom door, this Court deems that the appellant ought to be given the benefit of the doubt and it is therefore considering this damage as not exceeding €250. Thus the punishment applicable is that prescribed under article 325(1)(c) of the Criminal Code which is imprisonment for a term not exceeding six months.

- iii. Vilification, threats or bodily harm against other public officers in terms of article 95 of the Criminal Code. In this case the offence carries the punishment established for the vilification or insult in its contraventional form. Therefore according to article 31(1)(g) of the Criminal Code, the ascent from the punishments established for contraventions shall be to the punishment of a fine (*multa*) or imprisonment for a term not exceeding three months. In this case article 95 of the Criminal Code establishes also a mandatory fine ranging from a minimum of €800 up to a maximum of €5000.

18. This means that a term of imprisonment may be imposed in the case of each one of these three offences. In the case of the first offence this can be accompanied with a fine. In the case of the third offence the Court can award imprisonment together with a fine, or it can mete out just a fine – given that the ascent by one degree from the punishment of a contravention can also take the form of a fine.

19. However all three offences, are not offences punishable only with a fine (multa or ammenda). Moreover, they are not offences which apart from any increase of punishment in view of continuity or of previous convictions, are punishable with imprisonment for a term not exceeding seven years.

20. The behaviour of the appellant is such that renders his supervision by a probation officer as desirable in the interest of securing his rehabilitation, of protecting the public (including XX and her children) from harm and in order to prevent the appellant from committing further offences. This Court deems that in the circumstances of this case, including the nature of the offences and the character of the appellant, the issue of a probation order is appropriate.

21. Furthermore the Court deems that it is in the best interest of the appellant for him to be placed under a treatment order in terms of article 412D of the Criminal Code in order for him to be able to successfully overcome his drug and alcohol addiction problems.

22. On the otherhand, the Court has also taken in consideration the testimony of the *parte civile* XX. XXXXXXXX pleaded with the Court in favour of the removal of the protection order imposed in her favour and in favour of her minor children against the appellant. It is clear that XXXXXXXX still wants the presence of the appellant in her life and in the lives of her children.

23. This Court explained to XXXXXXXX the consequences of her original report and also that the protection order that was issued by the Court of Magistrates was a measure in favour of her protection, given that when she lodged the report she claimed that she was fearing the appellant. However XXXXXXXX now testified that she was not considering this order necessary. She even went as far as associating herself in and with her husband's appeal calling that appeal as her own.

24. This Court understood that the *parte civile* wanted protection from the appellant. Her main interest was to see her husband embark on a rehabilitation programme in order to change his alcohol abuse habits. However she was not willing to see her husband prohibited from approaching her or more importantly their children.

Decide

Consequently for the above-mentioned reasons, the Court, after having seen articles 95, 251B(1) and article 325(1)(c) of the Criminal Code, finds XXXXX upon his unconditional guilty plea registered before the Court of Magistrates, guilty as charged, and condemns him to a fine of eight hundred euro (€800) payable within a maximum period of thirty six months and places said XXXXX under a probation order for a period of three years in accordance with the decree that is duly annexed to this judgment, and this according to article 7 of the Probation Act.

Moreover, after having seen : -

- (a) the need to ensure that said XX is protected from any injury or molestation,
- (b) the welfare of XXX and XXXX, sisters XXXXXXXX,
- (c) the accommodation needs of the appellant, XX and XXX and XXXX, sisters XXXXXXXX,
- (d) the hardship that may ensue should the appellant be placed under a protection order both for the appellant himself as well as XX and XXX and XXXX, sisters XXXXXXXX;
- (e) the appellant's willingness to submit to the necessary treatment and rehabilitation programmes in order for him to overcome his alcohol and drug problems;
- (f) the best interests of XX and her children as described by XXXXXXXX in her testimony before this Court,
- (g) that XX herself insisted on the need for the appellant to retain his contact with XX and his minor children, as long as the appellant behaves in a civilised, sober, respectful and prudent manner in their regards,

The Court is not issuing a protection order in terms of article 412C of the Criminal Code. However after having seen article 382A of the Criminal Code, the Court is placing the appellant under a Restraining Order whereby while allowing the appellant to contact, communicate with and, if XX deems fit, live together with her and her children in the same residence, the Court restrains appellant from molesting in any manner XX or her minor children XXX and XXXX sisters XXXXXXXX. This restraining order shall remain in force for a period of three years.

Should the appellant, without any reasonable excuse contravene this restriction imposed upon him, he shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) of seven thousand euro (€7,000) or to imprisonment not exceeding two years or to both such fine and imprisonment.

Aaron M. Bugeja

Judge



THE COURT OF CRIMINAL APPEAL

TREATMENT ORDER (SECTION 412 D OF CHAPTER 9 OF THE LAWS OF MALTA)

Hon. Mr. Justice Dr. Aaron M. Bugeja M.A. Law, LL.D. (melit)

Today: 10th June 2020

The Police

vs.

XXXXX

The Court,

As per judgment delivered today in the above names, XXXXX was found guilty and subjected to a treatment order;

After having deemed it justified to issue a Treatment Order in terms of section 412D of Chapter 9 of the Laws of Malta;

After having clearly explained to the accused the consequences and implications of the Treatment Order and that if he fails to comply with the requirements and conditions of the treatment order the Court may impose on the such person a fine (ammenda) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69)

After having seen that the accused confirmed that he is willing to observe the requisites of the same Order;

The Court orders that XXXXX residing at

and holder of identity card number XXXXX be placed under a Treatment order for a period of one (1) year from today and subject of the following conditions that is to say that:

1. This Treatment Order shall be in order for XXXXX to overcome any drug and alcohol abuse problem.
2. That during the treatment order, XXXXXXXX obeys any/and all of the instructions and/or directions given to him/her by the Probation Officer from time to time and maintains the necessary contact requested by the Probation Officer depending on the nature of the case and situation.
3. That the Probation Officer must file a written report every six months whereby he/she submits a report to the Court in relation to the progress and behaviour of XXXXXXXX.
4. That XXXXXXXX immediately informs the Probation Officer of any change in his residential address.

ORDERS that a copy of this treatment order is handed over to XXXXXXXX and that another copy is notified to the Director of Probation Services.

If the person found guilty fails to adhere to the conditions mentioned here above, the Community Service Official shall report this to the Competent Court.

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XXXXX

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Christianne Borg
Deputy Registrar

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Aaron M. Bugeja
Judge



THE COURT OF CRIMINAL APPEAL

Hon. Mr. Justice Dr. Aaron M. Bugeja M.A. (Law), LL.D. (melit)

PROBATION ORDER

*(IN TERMS OF ARTICLE 7 OF CHAPTER 446 OF THE LAWS OF
MALTA)*

10th June 2020

The Police

vs.

XXXXX

The Court,

Having seen that by means of a judgment delivered today, XXXXX has been, inter alia, placed on an order of probation after that this Court considered it necessary to issue such an order in terms of article 7 of the Probation Act;

Now therefore the Court orders that **XXXXX** be subject to a Probation Order, for a period of three years subject to the following terms and conditions : -

1. That during this period **XXXXX** behaves well and adheres to all the orders and directions given to him by the Probation Officer, including any counselling requirements as the Probation Officer may deem fit from time to time;
2. That **XXXXX** retains regular contact with the Probation Officer as the said Officer deems fit and proper;
3. That **XXXXX** receives all the visits that the Probation Officer deems necessary, both at **XXXXX**' place of residence or wherever the Probation Officer deems fit;
4. **XXXXX** is obliged to submit and perform any test or analysis that the Probation Officer deems necessary from time to time, including any urine or other tests;
5. **XXXXX** is to follow any such training, educational, work or other programmes as the Probation Officer deems fit for him from time to time;
6. **XXXXX** is to follow a treatment order in terms of article 412D of the Criminal Code for a period of one year which treatment order shall be aimed at helping **XXXXX** overcome any alcohol and drug abuse problem or addiction that said **XXXXX** suffers from and this subject to all directions as the Probation Officer may deem necessary from time to time, including any direction in relation to any rehabilitation programme applicable for **XXXXX**.

Orders that a copy of this order be served on **XXXXX**, the Director of Probation and Parole as well as the Probation Officer appointed for this purpose.

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XXXXX

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Christianne Borg, Deputy Registrar

Aaron M. Bugeja

Judge