



Qorti tal-Appell Kriminali

Onor. Imhalled Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appell Numru: 620 / 2016

Il-Pulizija

vs

Shone Agius

Illum, 28 ta' Lulju, 2020

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant Shone Agius, iben Philip, imwieled Pieta' , fl-24 ta' Frar, 1973, detentur tal-karta ta' l-identita' bin-numru 123673 (M), akkuzat quddiem il-Qorti tal-Magistrati (Malta):

Talli f' xi hin bejn is-07.00 u d-09.00 ta' filghodu nhar l-01 ta' Frar tas-sena 2013, ikkommetta serq ta' diversi oggetti gewwa fond numru 8, Triq Oleandru, San Giljan ghad-dannu ta' Lolito Torregoza u/jew ta' persunali ohra, liema serq huwa kkwalifikat bil-mezz, bil-lok, bil-valur li ma jeeedix is-somma ta' elfejn, tlett mija u disa u ghoxrin ewro u sebgha u tletin eentezmu (€2,329.37e); 261 (b) (c) (e), 264 (1), 267, 269 (g) u 279 (a) Kapitolu 9 ta' Ligijiet ta' Malta.

2. fl-istess data, lok, hin u cirkustanzi laqa ghandu jew xtara hwejjeg misruqa, mehuda b' qerq, jew akkwistati b' reat jew b' kull mod li jkun indahal biex ibieghom jew imexxihom; Art. 334 tal-Kap. 9 tal-Ligijiet ta' Malta.

3. fl-istess data, hin, lok u cirkostanzi kiser il-provediment tal-Kap 446 Artikolu 7 tal-Ligijiet ta' Malta imposti fuqu b' sentenza tal-Qorti tal-Appell (Malta) Imhalled Dr. David Scicluna LLD datata 28 ta' Frar 2013, liema sentenza saret definitiva u ma tistax tinbidel.

4. fl-istess zminijiet u cirkostanzi rrenda ruhu recediv ai termini tal-Artikoli 49, 50 u 289 tal-Kap. 9 Ligi ta' Malta.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) tas-6 ta' Dicembru, 2016 fejn il-Qorti filwaqt illi astjeniet milli tiehu konjuzzjoni ulterjuri tat-tielet imputazzjoni, wara li rat l-artikoli 17, 31, 49, 50, 261 (b) (c) (e), 264 (1), 267, 269 (g), 279 (a), 280 u 289 tal-kapitolu 9 tal-Ligijiet ta' Malta, fuq ammissjoni sabet lill-imputat hat ital-imputazzjonijiet l-ohra kollha, u kkundannatu ghal piena ta' tlett snin u ghaxar xhur prigunerija.

Inoltre' a tenur tal-artikolu 412 D tal-Kodici Kriminali poggiet lill-hati taht Ordni ta' Trattament ghal zmien tlett snin sabiex jelgheb il-vizzju tad-droga u dan skont id-digriet moghti kontestwalment li jifforma parti integrali minn din is-sentenza.

Rat ir-rikors tal-appellanti Shone Agius minnu pprezentat fid-19 ta' Dicembru, 2016 fejn talab lil din il-Qorti joghgobha tilqa' dan l-appell u tirriforma s-sentenza appellata kif gej :

(1) tikkonfermaha fil-parti tar-reita: u

(2) thassarha u tirrevokaha fil parti tal-piena billi minflok l-piena inflitta tigi mposta piena jew sanzjoni ohra li tkun aktar ekwa u gusta ghac-cirkostanzi tal-kaz.

Rat l-aggravji tal-appellanti u cioe' :-

Illi kif ser jigi sotto mess waqt it-trattazzjoni ta' dan l-umili appell, l-esponent umilment jemmen illi fil-kaz odjern jezistu fatturi li jimmilitaw favur temperament fil-piena nflitta mill-ewwel Onorabbli Qorti.

L-esponent jixtieq jippuntwalizza bir-rispett illi wara snin shah jiftah kaz wara l-iehor minhabba l-vizzju tad-droga dan kien l-ahhar kaz pendenti li l-esponent kien fadallu. L-esponent ghandu bzonn l-ghajnuna u minn gewwa l-Facilita' Korrettiva ta' Kordin l-esponent se jkun aktar vulnerabili ghal vizzju tad-droga.

Inkwantu ghal piena, l-Onorabbli Qorti hadet kunsiderazzjoni tal-piena moghtija lil ko-awtur f'din is-serqa u dan minhabba l-fatt li huwa kien ammetta l-akkuzi fil-konfront tieghu minnufih. Wara li l-Onorabbli Qorti, kkunsidrat dan il-fatt l-esponent inghata piena akbar minn dik moghtija lil ko-awtur. Bl-akbar rispett l-Onorabbli Qorti naqset milli tiehu kunsiderazzjoni tal-fatt li filwaqt li l-ko-awtur kien akkuzat b' diversi reati ta' serqiet (li l-esponent ma kienx involut fihom), l-esponent kien akkuzat b' serqa wahda biss.

L-Onorabbli Qorti kkunsidrat l-ammissjoni tal-esponent bhala ' ... li bl-ebda mod ma jista' jinghad li kienet wahda bikrija' . Bl-akbar rispett l-esponent ammetta l-akkuzi migjuba fil-konfront tieghu fl-ewwel okkazzjoni li kellu wara li l-prosekuzzjoni irtirat it-tielet akkuza. L-esponent xtaq li qabel ma jirregistra ammissioni, l-prosekuzzjoni tirtira it-tielet il-imputazzjoni u dan stante il-fatt li t-tielet imputazzjoni kienet titratta sentenza moghtija minn din l-Onorabbli Qorti fit-28 ta' Frar 2013 mentri ir-reat akkuzat bih sehh nhar l-1 ta' Frar 2013 u cioe qabel ma nghatat propju din is-sentenza.

Bl-akbar rispett, dawn u fatturi ohra, ghandhom jattiraw tnaqqis fil-piena nflitta. Il-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali ma setghet qatt legalment u b' mod ragonevoli tasal ghall-htija ta' l-appellant bla ma tiehu inkonsiderazzjoni tali fatti ta' pagament parzjali. Di piu, l-appellant jghid li tali sentenza hija nulla u dan stante li l-istess sentenza hija nieqsa mid-dikjarazzjoni dwar il-perjodi li huwa qed jinstab hati ghalihom u allura ma irrizultax car ghal liema perjodi kienet qed tirisulta tali htija.

Fliet l-atti kollha processwali.

Rat il-fedina penali tal-appellant a fol. 3 u ohra aggornata markata bhala Dok 2 a fol. 117 et seq tal-process annessa mar-rapport tal-Ufficcjal tal-Probabtion li hija mimlija

convictions registrati fuqha minn Jannar 1993 sa Gunju 2016 u ghalhekk jirrizzulta li l-appellant segwa hajja ta' kriminalita ghal erbgħa u ghoxrin sena apparti l-proceduri odjerni li għadhom pendenti.

Rat ukoll li r-reati li l-appellant instab hati tagħhom fuq medda ta' zmien kienu ta' kull natura, fosthom diversi serqiet uħud minnhom ukoll aggravati, ricettazzjoni, reati kontra l-Ordinanza tat-Traffiku, pussess u traffikar ta' droga u hsara volontarja .

Semgħet it-trattazzjoni ;

Ikkunsidrat ;

Illi dan hu appell limitat għall-piena u dan għaliex fil-fehma tal-appellant il-piena hija wahda eccessiva fid-dawl tal-fatt li dak li għamel l-appellant għamlu għaliex kien mahkum mill-vizju mishut ta' droga u mhux għaliex kien involut fil-pjan ta' din is-serqa. Jgħid li l-piena kienet wahda bla proporzjon u issotni li fil-fatt il-piena li ingħatat fil-konfront tiegħu hija għola minn dik mogħtija fil-konfront tal-ko awtur.

Illi l-principju regolatur hu li mhux normali li tigi disturbata d-diskrezzjoni ta' l-Ewwel Qorti jekk il-piena nflitta tkun tidhol fil-parametri tal-ligi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dak li tkun fil-fatt. (Ara. **Ir-Repubblika ta' Malta vs. David Vella**¹, **Ir-Repubblika ta' Malta vs. Eleno sive Lino Bezzina**² u ohrajn.)

Issa fil-kaz in ezami , l-Ewwel Qorti ikkundannat lill-appellant għall-perijodu ta' tlett snin u għaxar xhur prigunerija effettiva u stqarret li dan għamlitu għaliex hasset li *'jekk ma tagħtix piena karcerarja tkun hi stess li qed tirrendi ruhha kompici sabiex l-appellant ikompli jirrovina hajtu jekk mhux addirittura jeqridha darba għal dejjem'*. L-ewwel Qorti qiset li l-appellant għandu fedina penali imzewqa sew, fejn irrizzulta li l-habs ma sewix ta detterent għajr li tul xi zmien li kien inkarcerat zamm il-bogħod mid-droga. Hadet in konsiderazzjoni ukoll kuntrarjament għal dak li qal l-appellant li l-piena mogħtija lill-ko awtur f' din is-serqa fejn kien ammetta mill-ewwe mal-

¹ Deciz mill-Qorti tal-Appell nhar l-14 ta' Gunju, 1999.

² Deciz mill-Qorti tal-Appell nhar l-14 t' April, 2003

pulizija l-involvement tieghu dwar is-serqa li jinsab biha akkuzat l-appellant odjern u in oltre li kien kkopera bi shih mal-pulizija. Dan ma kienx il-kaz tal-appellant odjern tant li dam sena sabiex jirregistra ammissjoni . Dawn il-kunsiderazzjonijiet flimkien mal-gravita tar-reat kienu l-fatti li a bazi taghhom l-ewwel Qorti hasset li kellha timponi sentenza ta' prigunerija effettiva li fil-fehma taghha hija l-unika alternattiva ghall-imputat li wera ma kienx kapaci jisfrutta l-opportunitajiet li inghawtawlu u ma tghallem xejn mill-izbalji tal-imghoddi.

Ikkunsidrat.

Din il-Qorti fliet l-atti u minn esami tal-verbal datat 9 ta' Gunju, 2016 jirrizulta li l-prosekuzzjoni kienet irtirat it-tielet akkuza u ftit wara l-appellant kien rregistra ammissjoni minkejja iz-zmien li huwa inghata sabiex jikkonsidra l-ammissjoni tieghu.

Din il-Qorti kif ghamlet l-ewwel qorti rat il-pre-sentencing report tal-Ufficjal tal-Probation Marilyn Attard esebit fl-atti u minn esami ta' l-istess appuntu minn dik il-parti intitolata '*Sahha u Vizzju*' jidher li l-appellant ghandu problema akuta ta' dipendenza ta' droga. Tant li beda jabbuza mid-droga minn meta kellu hmistax-il sena bl-uzu tal- cannabis u spicca dependenti bid-droga Eroina. Bhala rizulat ta' dan il-vizju mishut tilef hafna affarijiet minn hajtu fosthom flus, familja u fuq kollox sahhtu. Jiehu d-droga biex inessi d-dwejjaq u minn esami ta' dan ir-rapport jirrizulta li jsibha ferm diffiqli jghix minghajr droga. Jidher li huwa persuna misthija u minghajr id-droga ihoss li hu speci ta' huta barra mill ilma. Jidher li Shone kien ilu f'kuntatt ma Dr. George Grech sa mis-sena 1993. Kien ghamel kuntatt wiehed mas-Sedqa fis-sena 2005 u ghamel zewg programmi ta' rihabilitazzjoni mal-Caritas izda wiehed minnhom gie terminat fit-18 ta' Mejju, 2015. L-Ufficjal tal-Probation ikkonkludiet li l-appellant huwa bniedem ta' wahdu u ma tantx ghandu hbieb u ghakhekk gili is-solitudini stess tresqu lejn l-abbuz ta' droga.

Minn dak li stqaret l-ufficjal dwar intervista li kellha ma Dr. George Grech fir-rigward ta' l-appellant jidher li fiz-zmein meta kien qed jigi redatt ir-rapport l-appellant kien jattendi id-Detox u jiehu kura tal-methadone. Minkejja li kellu doza

qawwija ta' 80cc methadone ma kienx qed juri sinjali ta' progress minhabba nuqqas ta' motivazzjoni. Qal li ricientement kien wera x-xewqa li jibda programm residenzjali, pero Dr Grech qal li l-ewwel pass kellu jkun sabiex jieqaf mit-tehid ta' droga kompletament u jstabilizza l-methadone. Irrimarka li l-appellant kien ha hafna ghajnuna fil-psassat u dejjem baqa' jippersisti bl-uzu tad-droga.

Rat dak li kellha xi tghid l-ufficcjal tal-Probabtion meta xehdet quddiem l-ewwel Qorti nhar il-21 ta' Ottubru, 2016³ u mistoqsija jekk dak in-nhar jew ahjar f'dawk iz-zminijiet l-appellant kienx qed isofri minn xi marda stqarret li fil-fatt kif rapportat fir-relazzjoni taghha, l-appellant ghandu diversi probemi ta' sahha. Qalet li kien anke ghamel xi sentejn 'clean' mid-droga pero' kien rega waqa' ghal vizzju. Qalet ukoll li anke waqt l-andament ta' dawn il-proceduri kif jirrizulta mit-testjiet tal-awrina mehuda kienu taw rizultatat positivi ghall-presenza ta' Eroina u Kokajina.

L-Ufficcjal tal -Probabtion Marilyn Attard regghet xehdet quddiem din il-Qorti diversament preseduta⁴ u qalet li hija l-Ufficcjal tal-Probabtion li ssegwi lill-appellant l-ahhar Ordni li inghatat kienet fil-25 ta' Jannar, 2018 u ghalhekk ghandha sas-sena, 2021 isegwih. Qalet li ilha tafu mis-sajf tas-sena 2008. Tul dawn is-snin qalet li rat progress u dan ghaliex fejn qabel kien jabbuza mid-droga b'mod regolari kien hemm perijodu fejn waqaf, ghalkemm l-urines ghadhom jigu positivi ghall-Eroina u Kokajina. Cio nonostante issostni li l-uzu naqas. Qalet ukoll li ma kienux infethu hazijiet ohra u b'dan fisret li qieghed jissaporti il-vizzju tieghu minghajr il-htiega li jirrikorri ghall- kriminalita.

Ikkonfermat li l-appellant ghad ghanadu problemi kbar ta' sahha. Qalet li izomm kuntatt maghha regolari u imur ghal kul appuntament maghha Qalet li l-methadone tieghu qieghed fuq 90cc u jattendi regolarment lid- Detox. Qalet li ghadu jghix mal-genituri tieghu u ghahekk f' dak ir rigward ghandu stabilita pero ghadu ghaddej bl-uzu tad-droga. Ikkonfermat li ma jahdimx u sahtu lanqas ma tippermettilu jahdem. Qalet li huwa jiffinanzja il-vizzju bil-flus li jtuh il-genituri tieghu u bl-ghajnuna socjali

³ Fol. 149

⁴ Seduta tat-8 ta' Mejju 2016.fol. 179

li jircievi. Ikkonfermat li sa lejliet il-jum li xehdet ir-rizultat tal-kampjun tal-awrina tieghu kien wiehed positiv ghall-Eroina.

Il-Probation Officer regghet xehdet nhar id-19 ta' Jannar, 2019⁵ u qalet li kienet issegwi lill-appellant sa mis-sena 2007 u l-problema magguri tieghu kienet li sabiex isostni il-vizju tad-droga kien jirrikorri lejn il-kriminalita. Qalet li fil-present l-appellant jinsab il-habs u ghalhekk l-*urine tests* tieghu huma negattivi ghall-presenza ta' droga pero' qabel ma dahal il-habs dawn kienu jkunu regolarment positivi ghall-presenza ta' droga.

Qalet li pero' mis-sena 2013 'l hawn ma regax fetah kazijiet godda li hija haga positiva. Dan minkejja li baqa' juza d-droga u hasset li ma kienx ghad hemm in-necessita sabiex jinvolvi ruhu fil-kriminalita sabiex isostni il-vizzju tieghu Tghid li l-*habit* tieghu huwa kbir, ilu hafna jabbuza mid-droga u fil-fatt tahdem mieghu bil-ghan ta' *harm reduction* iktar milli sabiex ittih assistenza Qalet li l-ahhar kampjun tal-awrina li ghandha kien ta' Awwissu 2018 u kien wiehed positiv ghall-presenza ta' droga Kokajina u qablu kien hemm serje shiha li kienu positiva kemm ghal Eroina kif ukoll ghall-Kokajina.

Taf lil-problemi tieghu huma vini mizdudin, thrombosis, probemi bil-qalb ghandu feriti li ma ifiqux u ghalhekk il-problemi tieghu huma kbar. Tghid li imur l- MI room fil-habs biex jimmedika il-feriti kuljum.

Ikkonfermat li matul is-snin ghamel diversi programmi kien dahal l- Prison Inmate Programme u dahal San Blas, u kien anke f Kuntatt mal- Caritas fil-passat.

Marylin Attard regghet xehdet fit-12 ta Settembru, 2019 u qalet li tul is-sena 2019 ir-rizultati tal-kampjuni tal-awrina kienu positivi ghall-presenza ta' droga u kien biss meta l-appellant dahal il-habs li r-rizultati kienu negattivi ghal tali presenza. L-ahhar wiehed positiv kien fis-7 ta' Ottubru 2018 meta dahal il-habs wara dik id-data kollha kienu negattivi.

⁵ Fol. 188

Qalet li fil-fehma taghha kien sejjer tajjeb u pero ricentement qabel ma xhedet kien hemm okkazjoni meta l-appellant spicca l ITU kien kwazi tilef hajtu, kien qieghed f' xifer il-mewt . Qalet li kien ha infection mill-habs f' wahda mill-feriti tieghu . Tghid li kien spicca mitluf min sensiegh.

Illi nhar l-20 ta Frar 2020, xehdet ghal darb ohra l-Ufficjal tal-**Probation Marylin Attard** u spjegat li Shone kien ghamel intervent kirurgiku u spjegat li minn Lulju sa dak in-nhar li xehdet ma kellhiex rizultati ohra dwaru fir-rigward id-dependenza tieghu u dan ghaliex ma setghax jaghti kampnjun tal-awrina tieghu minhabba xi *medication* li ha u li qed jiehu. Spjegat li ma jidhirx li sejjer hazin imma bil-urines imbaghad tkun tista' tkun mija fil-mija. Sahhtu pero dejjem tmur lura qieghda. Basikament, fis-sena 2013 kienu operawh u fi kliem it-tabib kienu nehewlu 'vulkan' u dan rega kiber. Mistoqsija x' inhu dan 'il-vulkan' tghid li ma tafx u irrepitet dak li kien qallha it-tabib.

Illi nhar l-20 ta' Frar ,2020 xehed **Dr George Grech** u kkonferma li ilu jaf lil Shone Agius 'l-fuq minn ghoxrin sena. Stqarr li fil-prezent jinsab residenti ic-CCF. Stqarr li ghandu *history* ta' dipendenza ta' uzu ta' sustanzi speċjalment Erojina u Kokajina. L-ewwel li mar ghandhom kien f' Awissu, 1995 u kien hemm perjodu fejn waqaf, perjodu fejn dahal programm, perjodu fejn kien il-habs, imma kien rikadut kull darba. Hemm wkoll kumplikazzjonijiet mediċi minhabba l-problema tal-*injections* u fil-ftt gie operat f' saqajh,

Fil-prezent kien qieghed '*clean*', u l-ahhar darba li mar ghandu kien qabel ma dahal il-habs. Qal pero li t-trattament komplih gewwa l-habs. Jaf li xi snin ilu kien ghamel ukoll programm komplut il-Caritas.

Noel Cassar rappreżentant tal-Caritas ikkonferma li Shone Agius ghamel l-ewwel kuntatt għall-ghajnuna mal-Caritas fit-22 ta' Frar, 1996. Imbaghad rega' kkuntatja l-Caritas fit-22 ta' Settembru ,2005. Rega' ghamel kuntat fis-sena 2006, dan ikun ghamel session wahda . Fis-7 ta' Frar,2012 is-Sur Agius milli jider kien qed jiskonta sentenza l-habs u ghamel il-programm il-Prison Inmates Programme (PIP), ghamel il-programm kollu. Wara l-programm, spicca s-sentenza u beda jmur *ir-re entry* li

huwa *after care* tal-programm. Waqt li kien il-programm għamel il-*working phase*, għamel xi xogħol *working phase*. Fit-3 ta' Diċembru 2012 gie suspended mir-*re entry*. Ir-*re entry* hija li jagħmel sessions imma jkun barra mhux residenzjali. Wahda mir-ragunijiet kienet li kien irrifjuta li jhalli *urine sample*. Wara din id-data ma jidhirx li hemm xi records mal Caritas . Qal li din hi l-informazzjoni li giet mogħtija lilu minn rappresentant iehor statneli ma keinx gie ingutn biex jixhed dak in-nhar li gie mitlub jixhed fl-Alwa.

Ikkunsidrat ulterjoment

Illi dan hu appell limtiati fuq kwistjoni ta piena biss stante li fl-atti hemm regitrat l-ammissjoni tal-akkuzat. Issa kif gie ritenut minn din il-Qorti diversament preseduta fl-Appell Kriminali : "**Il-Pulizija vs. Emmanuel Testa**"⁶ :- "...kif gie ritenut (minn din il-Qorti kollegjalment komposta) fis-sentenza "**Ir-Repubblika ta' Malta vs. Mario Camilleri**"⁷ (5 ta' Lulju, 2002) l-ammissjoni bikrija mhux bil-fors jew dejjem , jew b' xi forma ta' dritt jew awtomatikament , tissarraf f' riduzzjoni fil-piena. Ir-regoli generali li għandhom jiggwidaw lill-qrati meta jkun hemm ammissjoni gew imfissrafis-sentenza fl-ismijiet "**ir-Repubblika ta' Malta**" vs. **Nicholas Azzopardi**"⁸, u dana b'riferenza għall-prassi tal-Qrati Inglizi .

F'dik is-sentenza kienet saret riferenza għall-**BLACKSTONE'S CRIMINAL PRACTICE**⁹ . Din il-Qorti ser tirriproduci l-bran rilevanti mill-edizzjoni tal-2001 ta' dan il-manwal , u dana peress li hija taqbel mall-principji espressi f'dana l-bran u qed tagħmlu tagħha :

"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

⁶ Deciza mill-Qorti tal-Appelli Kriminali nhar is-17 ta' Lulju, 2002

⁷ Deciza mill-Qorti tal-Appelli Kriminali nhar il-5 ta' Lulju 2002

⁸ Deciza mill-Qorti tal-Appelli Kriminali fis-sentenza tagħha preliminary mogħtija nhar l-24 ta' Frar 1997

⁹ Blackstone Press Limited

discount, the court may have regard to the strength of the case against the offender. An offender who voluntarily surrenders 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) 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) 82 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 fact 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 might be lost in any of the following circumstances: 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 had been caught red-handed and a plea of guilty was practically certain . It was also established in COSTEN that the discount may be reduced where the accused pleads guilty to specimen counts ."

Illi l-appellant Agius jibbaza parti mill-argumentazzjoni tieghu fuq il-paragun ma piena li nghatat f' kaz iehor li kien qed jinstema fil-konfront ta ko awtur Din il-Qorti taghmel riferenza ghall-insenjament tal-Qorti tal-Appell Kriminali (kollegjali) fis-sentenzi taghha fil-kawzi "**Ir-Repubblika ta' Malta vs. Omissis u Brian Godfrey Bartolo**¹⁰¹¹" u "**The Republic of Malta vs. Omissis and Perry Ingomar Toornstra,**" fejn fiz-zewg kazijiet gew citati b'approvazzjoni brani mill-BLACKSTONE'S CRIMINAL PRACTICE u minn ARCHBOLD , "**Criminal Pleading ,Evidence and**

¹⁰ Deciza mill-Qorti tal-Appelli Kriminali nhar l-14 ta' Novembru 2002

¹¹ Deciza mill-Qorti tal-Appelli Kriminali nhar it-12 ta' Gunju, 2003

Practice” , li jeżaminaw x’ jghidu l-Qrati Inglizi f’ sitwazzjonijiet simili, biex wiehed jislet certi linji ta’ gwida.

Hekk fil-**BLACKSTONE’S**¹² , jinghid :-

“A marked difference in the sentences given to joint offenders is sometimes used as a ground of appeal by the offender receiving the heavier sentence. The approach of the Court of Appeal to such appeals has not been entirely consistent. The dominant line of authority is represented by Stroud (1977) 65 Cr App R 150. In his judgement in that case, Scarman LJ stated that disparity can never in itself be a sufficient ground of appeal – the question for the Court of Appeal is simply whether the sentence received by the appellant was wrong in principle or manifestly excessive . If it was not the appeal should be dismissed, even though a co-offender was, in the Court of Appeal’ s view treated with undue leniency. To reduce the heavier sentence would simply result in two rather than one, over-lenient penalties. As his Lordship put it, ‘The Appellant’s proposition is that where you have one wrong sentence and one right sentence, this Court should produce two wrong sentences.

That is a submission which this Court cannot accept.’ Other similar decisions include Brown [1975] Crim LR 177, Hair [1978] Crim LR 698 and Weekes [1980] 74 Crim App R 161..... However, despite the above line of authority, cases continue to occur in which the Court of Appeal seems to regard disparity as at least a factor in whether or not to allow an appeal (see, for example, Wood (1983) 5 Cr App R (S) 381). The true position may be that, if the appealed sentence was clearly in the right band, disparity with a co-offender’s sentence will be disregarded and any appeal dismissed, but where a sentence was, on any view, somewhat severe, the fact that a co-offender was more leniently dealt with may tip the scales and result in a reduction. Most cases of disparity arise out of co-offenders being sentenced by different judges on different occasions.

Where however, co-offenders are dealt with together by the same judge, the court may be more willing to allow an appeal on the basis of disparity. The question then is whether the offender sentenced more heavily has been left with ‘an understandable and burning sense of grievance’ (Dickenson [1977] Crim LR 303). If he has, the Court of Appeal will at least consider

¹² 2001 - para. D22.47 p.1650

reducing his sentence. Even so, the prime question remains one of whether the appealed sentence was in itself too severe.

Thus in NOOY (1982) 4 Cr App R (S) 308, appeals against terms of 18 months and nine months imposed on N and S at the same time as their almost equally culpable co-offenders received three months were dismissed.

Lawton LJ said :

‘There is authority for saying that if a disparity of sentence is such that appellants have a grievance, that is a factor to be taken into account. Undoubtedly, it is a factor to be taken into account, but the important factor for the court to consider is whether the sentences which were in fact passed were the right sentences.’

ARCHBOLD¹³ jikkumenta hekk :-

“Where an offender has received a sentence which is not open to criticism when considered in isolation, but which is significantly more severe than has been imposed on his accomplice, and there is no reason for the differentiation, the Court of Appeal may reduce the sentence, but only if the disparity is serious. The current formulation of the test has been stated in the form of the question: “would right thinking members of the public, with full knowledge of the relevant facts and circumstances, learning of this sentence consider that something had one wrong with the administration of justice ?” (per Lawton LJ in R. v Fawcett , 5 Cr. App. R. (S) 158 C.A.).

The Court will not make comparisons with sentences passed in the Crown Courts in cases unconnected with that of the appellant (see R. v. Large, 3 Cr. App. R. (S) 80 , C.A.) There is some authority for the view that disparity will be entertained as a ground of appeal only in relation to sentences passed on different offenders on the same occasion : see R. v. Stroud , 65 Cr. App. R. 150 C.A. It appears to have been ignored in more recent decisions, such as in R. v. Wood ... Fawcett, ante and Broadbridge , ante. The present position seems to be that the court will entertain submissions based on disparity of sentences between offenders involved in the same case, irrespective of whether they were sentenced on the same occasion or by the same judge, so long as the test stated in Fawcett is satisfied.”

¹³ 2001 para. 5-174,p.571

Kif irritereniet il-Qorti tal-Appell Kriminali (Kollegjali) fil-kawza “**Ir-Repubblika ta’ Malta vs. Ali Aibrahim Algaoud**¹⁴” fejn l-appellant ukoll kien qed jaghmel riferenza ghal proceduri li ma kienux konnessi mall-proceduri istitwiti kontra tieghu, l-Qorti qalet li:-

“Fil-waqt li..... taqbel li ghandu jkun hemm proporzjonalita’ u relativita’ fil-pieni f’ kazijiet analogi, filfatt kull kaz ghandu l-fattispecji tieghu.” ghax kif gie ritenut f’ “**R. v. Large**¹⁵”) : “*The Court will not make comparisons with sentences passed in the Crown Courts in cases unconnected with that of the appellant.*” (ara ukoll f’ dan is-sens “**Il-Pulizija vs. Salvatore Debono**¹⁶” “**Il-Pulizija vs. Aaron Cassar**¹⁷” u ohrajn).

Issa fil-kaz in ezami proprjament non si tratta ta’ disparita’ fil-piena bejn zewg ko-akkuzati fl-istess process, imma paraguni ma sentenza ohra moghtija minn Qrati sahsitra ta’ kompetenza differenti dwar l-istess akkuzi skond l-appellant.

Illi pero’ din il-Qorti m’ghandhiex quddiemha l-process tal-ko-awtur u ghalhekk ma hix f’psoizzjoni li tara fl-ewwel lok jekk l-akkuzi kollha inghatawx lill-koawtur, jekk in effetti l-koawtur ghandux il-Ofedin apenali li ghandu l-appellant odjern. Apparti l-fatt li gja irrizulta mis-entenza moghtija mill-ewwel Qorti li l-koawtur ammetta l-akkuzi fil-konfront tieghu minnufih fl-ewwel oportunita’ li inghata lilu waqt li l-appellant odjern irregistra ammissjoni sena wara li beda l-kaz. In oltre jidher li l-koawtur ghen lill-proskeuzzjoni u tabilhaqq ikkopera pero’ f’dan il-kaz ma hemm xejn minn dan. Jidher ukoll I f’dan il-kaz l-appellant ghandu problema kbira u cioe dik ta abbu ta droga u minkejja l-ghajnuna kollha li inghat matul is-snin m gharaffx jisfruta l-oportunijiet moghtija lilu izda baqa’ ghaddej f’din l-istess hajja ta’ kriminalita tant li illum rega’ qieghed il-Qorti .

Jidher car li huwa minnu li fil-prezent l-appellant huwa *clean* mid-droga pero’ dan huwa minhabba l-fatt li jinsab detenut il-habs u dan qed jinghad ghaliex waqt l-andament ta’ dawn il-proceduri minkejja ukoll li kien qed jigi segwit mill-Ufficjal

¹⁴ Deciza mill-Qorti tal-Appelli Kriminali nhar l-20 ta’ Mejju 2004

¹⁵ 3 Cr. App. R. (S) 80 C.A

¹⁶ Deciza mill-Qorti tal-Appelli Kriminali nhar l-24 ta’ Gunju, 2004

¹⁷ Deciza mill-Qorti tal-Appelli Kriminali nhar it-28 ta’ Ottubru 2004

tal-Probation xorta baqa' jippersisti li jiehu d-droga tant li ir-rizultati dwar l-analizi li saret fuq il-kampjuni moghtija mill-appellant ilkoll taw rizultat ghall-presenza ta' droga.

Din il-Qorti semghet ukoll lil Dr George Grech jghid kemm ilu jipprova jghin lill-appellant u li fil-fatt ma tantx hemm wisq x'jista' jsir kif fil-fatt stqarret l-Ufficjal tal-Probation salv li tghinu fir-rigward ta' self harm. F'dan il-kaz il-fatt li ser jiznamm il-habs ser jinzamm il-bogħod mill-fakolta li jottjeni id-droga

Għalhekk f'dan il-kwadru u in vista tal-ammissjoni tal-appellant u in vista tal fatt li l-peina moghtija mill-ewwel Qorti taqa' fil-parametri tal-ligi ma jirrizulta xli hemm raguni 'l għala hija għandha tvarja il-piena inflitta mill-ewwel Qorti statne li din hija *'safe u satisfactory'*.

Għalhekk din il-Qorti qeda tikkonferma is-sentenza appellata fir-rigward tal-htija tal-ewwel u r-raba' akkuza u l-piena li gie kkundannat u cioe' tlett snin u għaxar xhur prigunerija, tikkonferma dik il-parti tas-sentenza fejn stqarret li r-reat ta' ricettazzjoni ingħata alternattivament għar-reat ta' serq u għalhekk din il-Qorti qeda ukoll tastjeni milli tiehu konnjizzjoni ta tali akkzua u tikkonfermaha fejn astjeniet li tiehu konnjizzjoni tat-tielet akkuza stante li din giet irtirata mill-prosekuzzjoni waqt l-andament ta' dawn il-proceduri stess.

Din il-Qorti pero tati r-rakomandazzjoni tagħha stante is-sahha debboli u fjakka tal-appellant li f'kaz li d-Direttur jidhirlu li s-sahha tal-appellant qed tiddeterjora stante li hemm possibilta' li jiehu xi infezzjoni ohra mill-habs li jitrasferrixxi lill-appellant gewwa l-Isptar għal kura Medika

(ft) Consuelo Scerri Herrera

Imhalled

VERA KOPJA

Franklin Calleja

Deputat Registratur