COURT OF CRIMINAL APPEAL

Judge Hon. Dr. Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal no. 107 / 2020

The Police

(Inspector Sarah Magri)

vs

Milos Petric

Today the, 3rd November 2020

The Court,

Having seen the charges brought against Milos Petric, bearer of Identity Card Number: 137007A, accused before the Court of Magistrates (Malta):

On the 23rd September, 2019 at around 14:00 in Saint Peter and Saint Paul Street, Isla:

1. he caused bodily harm, which are considered slight, where the effect considered both physically and morally, is of small consequence to Marianna Petric as certified by Dr. Glenn Micallef Med Reg: 1906 (Chapter 9 Article 221 (3)));

2. As a person deemed to be recidivist after various sentences delivered by the Court of Magistrates (Malta) which have become res judicata (Chapter 9 Article 49,50).

The Court is required to provide for the safety of the person of Marianna Petric or the good order kept in public in accordance with the provisions of Article 383 of the Criminal Code (Chapter 9).

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 26th June, 2020, by which, the Court, found the accused guilty of the charges brought against him and condemned him to pay a fine of eight hundred euros.

Furthermore, in addition to the punishment being inflicted in terms of the aforementioned Articles of Chapter 9 of the Laws of Malta, the Court in terms of Article 383 of said Chapter 9 orders Milos Petric to keep the peace with Marianna Petric and in order to provide for the safety of said Marianna Petric, ordered said Milos Petric to enter into his own recognisance in the sum of two thousand euros. This obligation is to remain in force for a period of twelve months from today.

Having seen the application of the appellant Milos Petric filed on the 15th July, 2020, wherein he humbly requests that this Honourable Court to **VARY** the appealed judgement as regards the punishment inflicted and instead awards a lesser and more appropriate punishment which is qualitatively and quantitatively more proportionate in relation to the facts concerned.

That the ground of appeal is clear and manifest and consists of the following:

The punishment imposed on the appellant by the Court of Magistrates (Malta) is excessive and should be varied;

Punishment Inflicted

That the appellant is filing this appeal since in his humble opinion the punishment meted out was disproportionate to the facts of the case. The appellant respectfully notes that when inflicting the punishment the Court of Magistrates did not take into consideration the fact that the appellant got involved in the incident when an argument at his residence broke out and commotion started between his children and their mother, it was later that he stepped in. It is important to stress that the argument only got violent because he asked his wife to remove a stray cat over which two of their children fought with the result that his daughter got punched in the face!

Moreover, the Court also did not note that according to the affidavit of PS654, the accused also ended up with slight injuries with minor consequences of a left index finger minor laceration.

Thus, whilst it is not being contested that the punishment inflicted is one within the parameters of the law, however, when one considers the circumstances of the case in question, the punishment is definitely an exaggerated one.

Moreover, various times the Court has accentuated the importance of punishment in having a rehabilitative effect rather than having a deterrent effect. In fact, in the judgment delivered by the Criminal Court of Appeal dated 22nd of September, 2013, in the names Il-Pulizija vs. Stephen Spiteri, the Court held that:

"*Konsiderata l-piena bhala mezz ta' riforma tal-imputat fl-interess tieghu u tas-socjeta', izjed u izjed din il-piena karceraja tidher inadatta. Infatti, permezz taghha, tifel ta'*

kondotta sa issa tajba, u li diga', bil-fatti, wera' soghba tarreat li ghamel, ser jinxtehet ghal soggorn ma' nies li filmaggjoranza taghhom huma delinkwenti recidivi multipli. B'hekk minflok jigi riformat, hemm il-possibilta' illi huwa jiehu lezzjonijiet fid-delinkwenza ... tara illi huwa opportun illi inehhi l-impressjoni illi l- iskop tal-ligi kriminali u talpiena huwa biss illi jkun ta' deterrent biex jghallem lil dak li jkun illi 'crime does not pay'. Huwa certament kuncett illi ghamel zmien u kien il-kuncett predominanti, pero llum ilkuncett m'huwiex aktar ta' piena retributtiva, imma ta' sistema restorattiva, fejn anke jekk hu possibbli u safejn hu possibbli, u tenut kont anki tac-cirkostanzi kollha tal-kaz, kif ukoll tal-precedenti kriminali tal-imputat, isir tentattiv biex mhux biss issir rikonciljazzjoni bejn l-agent tad-delitt u l-vittma li tkun sofriet danni u anke sofferenzi ohrajn, imma anki illi jkun hemm possibilita' illi dak li jkun jigi nformat u jikkonvinci ruhu illi ghandu jsegwi t-triq ittajba"

At this stage, the appellant makes reference to various other judgements whereby even recidivist persons, were given another opportunity, through a reduction in punishment, simply because they did not follow their previous habits and lifestyles at the time when the charge was comitted. In fact, in the case of **Il-Pulizija vs Charlot Aquilina**, decided by the Court of Magistrates (Malta) on the seventh (7) of November, 2008, the Court stressed the importance of giving the accused another opportunity and in fact the Court imposed a Probation Order notwithstanding that the accused was recidivist:

Ghal finijiet ta' piena il-Qorti kkunsidrat bir-reqqa kollha dovuta is-Social Inquiry Report esebit a fol. 104 et sequitur tal-process minn fejn jirrizulta li l-imputat kellu trobbija instabbli, li huwa kellu problema serja ta' abbuz mid-droga… u li huwa ilu ma jabbuza mid-droga b'mod kontinwu ghal dawn l-ahhar erba' snin… li tul dawn l-ahhar erba' snin kienu qed isiru urine sample tests lill-imputat u dawn dejjem irrizultaw fin-negattiv… Il-Qorti wara li kkunsidrat dan kollu jidrilha li ghalkemm mill-fedina penali tal-imputat jirrizulta li huwa inghata opportunitajiet rega' qabad it-triq il-hazina ghaliex kien ghadu jabbuza mid-

droga, irrizulta wkoll li dawn l-incidenti jirrisalu ghal qabel is-sena 2003, u cioe' ghal qabel ma l-imputat beda u ttermina b'success il-programm residenzjali, u ghalhekk l-imputat ghandu jinghata l-ahhar opportunita' sabiex jirriforma ruhu u jaqbad definittivament it-triq it-tajba specjalment meta wiehed jikkunsidra li llum il-gurnata l-imputat oltre li ttermina b'success il-programm residenzjali ghandu xoghol stabbli u anki hajja familjari wkoll pjuttost stabbli.

In the case of **Il-Pulizija vs Ritmar Hatherly u Justin Farrugia,** decided by the Criminal Court of Appeal on the ninth (9) of October, 2008, the Court whilst making reference to other judgments held that:

"Issa, ghalkemm huwa veru li qorti ghandha dejjem toqghod attenta li ma tizvalutax il-mizuri mhux karcerarji a disposizzjoni taghha b'applikazzjoni taghhom bl-addocc u minghajr ma tiehu kont xieraq tal-antecedenti penali ta' dak li jkun, mill-banda l-ohra s-semplici fatt li persuna tkun precedentement inghatat probation jew conditional discharge ma jfissirx necessarjament li ma tkunx tista', jew li m'ghandhiex, fil-kazijiet li jikkwalifikaw terga' tinghata probation jew conditional discharge jew tigi applikata fil-konfront taghha xi mizura ohra taht il-Kap. 446. F'dan ir-rigward din il-Qorti taghmel referenza ghal dak li nghad fis-sentenza taghha tat-18 ta' Jannar 2001 fl-ismijiet Il-Pulizija v. George Farrugia: "Issa, huwa veru li l-appellat ghandu fedina penali li ftit din il-Qorti rat bhalha. Bizzejjed jinghad li dina l-fedina penali tiehu xejn anqas minn 42 faccata. L-appellat illum ghandu erbghin sena, u f'dawn l-erbghin sena huwa kellu xejn anqas minn 77 kundanna mill-Qrati ta' Gustizzja Kriminali. Kien hemm xi okkazzjonijiet fis-snin sebghin u fil-bidu tassnin disghin meta l-qrati applikaw fil-konfront tieghu sia l- Artikolu 5 kif ukoll l-Artikolu 9 tal-Kap. 152; il-bqija talkundanni, pero`, jinvolvu multi u habs…"Apparti li din il-Qorti ma tistax taqbel ma' l-Avukat Generali fejn dan jghid li s-sitwazzjoni ta' l-appellat hija "irriversibbli" - fil-fehma tal-Qorti hija l-mewt biss li ggib stat jew sitwazzjoni ta' irriversibilita` assoluta - anqas ma tista' din il-Qorti tikkondividi l-fehma ta' l-Avukat Generali li Ordni ta' Probation hu indikat biss ghal "first offenders" zghazagh. Anke fil-kaz ta' persuna ta' eta` mhux

zghira u li forsi hu recidiv, tista' titfacca fil-hajja ta' dik il-persuna a window of opportunity li permezz taghha jkun jista' jinkiser ic-ciklu ta' kundanni u ta' prigunerija.

The Court heard the parties make their oral submissions during the sitting of the 13th October 2020.

The Court considers further,

The Court took note of the affidavit given by **PS 654 E Bondin** presented in the acts of the proceedings wherein he stated that on the 23rd September 2019 at around 14.00, he was informed that an emergency call reached the control room where a female person requested assistance regarding domestic violence in residence 31, Triq San Pietru u San Pawl l-Isla. The police went on the spot immediately where Marianna Petric was spoken to and she stated that earlier her children had started arguing regarding a cat where this also got physical. She stated that at a certain point in time her husband the appellant who was also present at home started arguing with her and told her to get rid of the cat as this is causing trouble with their children. Marianna stated that in this argument her husband grabbed her from her mouth causing her some injuries.

Marianna Petric was asked to produce a medical certificate and proceed to Cospicua Police station to submit a risk assessment. This was done by risk assessors Llona Micallef Deguara and Redent Farrugia in which scored 8 resulting in medium risk. Marianna Petric produced a medical certificate in which Dr Jesmond Cassar stated that she was suffering from slight injuries with minimal consequences.

On the 1st October 2019 at about 3.00p.m the appellant was asked to report to Zabbar Police station to be spoken to regarding the incident. He was informed

that he can contact his lawyer before giving his statement to the police where he refused and signed the declaration before giving this statement.

The appellant stated that on the 23rd September 2019 at around 14.00p.m he came home from work on break and he found his daughter Maria crying because she wanted to play with the cat and her brother Aleandro punched her. He stated that this happens nearly every day. He confirmed that he started arguing with his wife regarding the cat she brought from the streets as the same cat littered everywhere in the house. He told her that if his daughter was going to be punched again by her brother because of the cat she should get rid of it. It was then that his wife continued shouting and threatened him that she will throw his belongings out of his house and not the cat.

Milos Petric stated that he told her to lower her voice as the other son was sleeping but she kept shouting and the baby woke up. She stated that he tried to cover her mouth with his hand but she managed to bite his finger and hit him in the eye. Petric produced a medical certificate dated 23rd September, 2019 where Dr Glen Micallef certified him with slight injuries with minor consequences of a left index finger minor laceration. After this argument Milos stated that his wife called the police where he added that these arguments arise because his wife keeps so much animals in the house and refuses to keep the house clean.

Marianna Petric took the witness stand and gave evidence on the 19th June 2020 and explained that on the 23rd September 2019 her kids were at home and had an argument between them in relation to a cat they had adopted that same week. She explains that her two kids are boys and are ten years old and five years old. She explained that her husband the appellant wanted to throw the cat out of the house . He had just returned from work and she was not willing to throw the cat out and thus started arguing between them and he grabbed her by the mouth. He placed four of his fingers in her mouth and one under her chin. She felt that she

was choking u thus called the police station the moment he left go of her. Then then turned up at her home and was sent ot make a medical certificate. Social workers came to the police station and she started to speak with them. She then went to Bormla polyclinic. With regard to injuries sustained by her she stated that she had scratches in her mouth and blood. She exhibited her medical certificate marked as dok SM1. She then went to the police station and handed them over a copy of the medical certificate and then went home.

In cross examination she elaborates further and states that her husband got he by the mouth after having told her to shut up. She confirms that she bit her husband to let go of her and the moment he left her go she went to make the report at the police.

The appellant **Milos Petric** took the witness stand voluntarily before the Court of Magistrates on the 19th June 2020 and stated that some day near to the end of September 2019 he had got home from work for a break at about 2.00p.m or 3.00p.m and as usual found his daughter crying because her brother had hit her on account of the cat. He explains further that his wife had got the cat in from the streets. He said that they had argued over this cat which his wife brought in a month before since she litters all over the place and thus for them it was a problem. At that time they already had another car, a rabbit, pigeons and parrots. He then asked his daughter what had happened and immediately he started speaking with his wife that they do not need that cat since they had enough pets. She did not want and started screaming for no reason at all. He raised his voice and he told her not to shout since there was a baby asleep three meters away from her. She then started shouting and stating that I could leave the house and he told her on three occasions not to raise he voice and she started shouting even more. He thus woke up and grabbed her mouth to close it. He however did not press he said. At that moment she bit his finger and hit him. Asked how he closed her mouth he replied with I hand and told her "*please put your voice down*."

In two seconds she bit him. He refused having put his fingers in her mouth. Asked if he reported the case to the police he says no. Asked if he knew his wife went to the doctor and had a medical certificate he says that she had told him about it. He refuses that she was bleeding when he grabbed her mouth.

The court also took note of the judgment delivered in the names **The police vs Milos Petric** dated 19th November 2018 where he was found guilty of having caused injuries of slight nature on his daughter Maria and for having exceeded the bounds of moderation. In this judgment he was condemned to a period of 16 days imprisonment suspended for two years however notwithstanding this he was not charged with having committed an offence during the operative period of a suspended judgment. Notwithstanding he was found guilty of being a recidivist in terms of section 49 of the laws of Malta.

From the above it thus results that the appellant admitted grabbing the mouth of the complainant his wife and that he was aggressive in her regard. He explains that he did this so that she would lower her voice since she was shouting and he thought that she would wake up their baby. He also confirms that the argument started off between his siblings and that he only intervened when his wife refused to lower her voice. At that moment in time when the appellant got hold of the mouth of the complainant she bit him and it was at that moment that he let go of her.

It appears thus that the incident arose over a small incident which had grown out of proportion. Evidently the appellant has a problem about anger management so much so that he was not able to control his emotions and expected his wife to lower her voice upon his request instead try to convince her otherwise. Although the incident was small it transpires according to the medical certificate issued by Dr. Jesmond Cassar exhibited a fol. 8 (dok SM1) that she had a scratch on the front part of her neck, a superficial small laceration over the top lip. Thus such

injuries are compatible by what is stated by the complainant and the appellant himself in that she was grabbed by the mouth.

The appellant is not appealing from the question of guilt in relation to the charges but is appealing from the type of punishment that was awarded in that it was excessive. The multa imposed falls within the parameters established in the law for finding the accused guilty of the charge of causing injuries of slight nature.

In relation to the question of punishment the court makes reference to the decision delivered by the Courts of Appeal in its superior competence in the names **Rep ta Malta vs Brooks Lia**[1] which made reference to what was stated in Blackstone's Criminal Practice 2004, namely:

"*The phrase 'wrong in principle or manifestly excessive' has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. Thus in Nuttall (1908) 1 Cr App R 180, Channell J said, 'This court will…be reluctant to interfere with sentences which do not seem to it to be wrong in principle, though they may appear heavy to individual judges' (emphasis added). Similarly, in Gumbs (1926) 19 Cr App R 74, Lord Hewart CJ stated: '…that this court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence there must be some error in principle.*"

Both Channell J in Nuttall and Lord Hewart CJ in Gumbs use the phrase 'wrong in principle'. In more recent cases too numerous to mention, the Court of Appeal

[1] Decided on the 2nd September 2010

has used (either additionally or alternatively to 'wrong in principle') words to the effect that the sentence was 'excessive' or 'manifestly excessive'. This does not, however, cast any doubt on Channell J's dictum *that a sentence will not be reduced merely because it was on the severe side – an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed.* [2]"

It may appear that the punishment awarded was in fact on the high side but one cannot forget that the accused is being found guilty of causing bodily harm in the presence of his children on the person of their mother, of being a recidivist and of not having learnt anything from the suspended sentence given earlier on.

Thus in line with the above the court does not think that the merits of the case warrant a change in punishment especially when one considers that this is not the first time that the appellant is found guilty of a case that concerns domestic violence, the act that he is being found guilty of being a recidivist and the fact that this incident was unwarranted and only came to the fore due to the fact that the complainant reported the case to the police. It appears that these type of cases regarding domestic violence are on the increase and thus the court should send a message that it will not tolerate this type of bullying in trying to get a message across.

Thus the court is hereby confirming the guilt of the accused of both charges and also confirms that punishment awarded.

(ft) Consuelo Scerri Herrera

Judge

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Franklin Calleja

Deputy Registrar

[2] Para. D23.45, pagna 1695