



Court of Magistrates (Malta) as a Court of Criminal Judicature

**CASE NO. 3251/2023: THE POLICE (INSPECTOR BRIAN XUEREB)
V. [REDACTED] (UK PASSPORT [REDACTED])**

MAGISTRATE: DR. VICTOR G. AXIAK

17 June 2023

THE COURT,

having seen the charges preferred against [REDACTED], son of Francis and Cathlene, residing at room no 326, Tropicana Hotel, Ball Street, St. Julian's, holder of British Passport Number [REDACTED], born on the 20/11/1986, at Liverpool, United Kingdom ("the accused"), who was arraigned before the Court on 17 June 2023 and charged with having on the night between the fifteen (15) and the sixteen (16) of June 2023, in Ball Street, St. Julian's, Malta and/or on these Islands:

- 1. had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drug, and was not otherwise licensed or otherwise authorised to manufacture or supply the mentioned drug and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drug, and failed to prove that the mentioned drug was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101, of the Laws of Malta, which drug was found under circumstances denoting that it was not for his personal use.**

having seen that the the Court was also requested to order the defendant, in case of guilt, to pay the costs related to the appointment of experts according to Article 533(1) of Chapter 9 of the Laws of Malta,

having seen that in the sitting held on 17 June 2023 the accused pleaded guilty to the charge brought against him and the Court thereafter explained the consequences of the admission to the accused and postponed the case to ensure that the accused consults his lawyer once again and reconsider his decision,

having seen that when the case was called once again the accused reiterated his admission to the charge brought against him,

having seen that the Court accepted the defence's request for the Court to hear the testimony of ██████████,

having heard submissions on punishment,

having seen all the acts of the case including the Order of the Attorney General in accordance with Article 22(2) of the Chapter 101 of the Laws of Malta for this case to be tried summarily by this Court sitting as a Court of Criminal Judicature,

gives the following

Judgement

1. During submissions on punishment, Counsel for the defence declared that given the special circumstances of the case that is: (i) the evident physical disability that the accused suffers from, which disability makes him a vulnerable person at law and a person vulnerable to be manipulated and exploited by others, (ii) The minimal role which the accused played in the crime in question, and (iii) the existence of the circumstances described in the 4th Schedule of Chapter 101 of the Laws of Malta particularly circumstances denoting a lesser role in the commission of the offence as attested to by the facts established in the testimony of Mr ██████████ including the social background and medical circumstances effecting the accused, there is agreement with the Prosecution that by virtue of Art 22(2)(b)(ii) of Chapter 101 of the Laws of Malta the punishment in this case should be a custodial sentence that is awarded in its minimum. The Prosecution declared that it is in agreement with this declaration.
2. The Court considers that there is agreement between the Prosecution and the Defence that notwithstanding the wording of the charge the accused was effectively only engaged in simple possession, that he played a lesser role in the commission of the offence given that he performed a limited role, acted under the direction of others and got involved in the commission of the offence because of his naivete and because he was exploited by others.

3. In the circumstances, given the early plea of admission, the fact that the accused cooperated with the Police in their investigations, that he has a clean conduct and that he had a lesser role in the commission of the offence the Court considers it would be appropriate to award a custodial sentence in its minimum.

Decision

For these reasons, having seen the relevant provisions of the law (Articles 9(1)(b) and 22(2)(b)(ii) of Chapter 101 of the Laws of Malta and Regulation 9 of Subsidiary Legislation 101.02) the Court finds the accused guilty of being in possession of cocaine (simple possession) and condemns him to three (3) months imprisonment.

Furthermore, the Court orders the forfeiture in favour of the Government of Malta of the objects that were seized from the accused (Doc F) and the destruction of the illicit substance once this judgement becomes final and definitive, in terms of law

With regard to the Prosecution's request to condemn the accused to pay the costs related to the appointment of experts in accordance with Art. 533(1) of Chapter 9 of the Laws of Malta (including those that may have been appointed in the inquest *in genere*), in the absence of any information in this regard the Court abstains from taking cognisance of this request.

**V.G. Axiak
Magistrate**

**Y. M. Pace
Dep. Registrar**