



Court of Criminal Appeal

**Hon. Madame Justice Dr. Consuelo Scerri Herrera, LL.D., Dip Matr.,
(Can), Ph.D.**

Appeal Nr: 15 / 2023 / 1

The Police

Inspector Bernard Charles Spiteri

-Vs-

Joey Hendrikus Joza Johanna Deckers

Today the, 25th January 2024

The Court;

Having seen the charges brought forward against the accused Joey Hendrikus Joza Johanna Dekers, holder of Dutch passport number NVL6HP4J8 and Maltese Identity Card number 303033A, aged 28 years, son of Alphonse and Nicole nee Degroot, born in Kerkrade, Netherlands on the 14th June, 1994, wherein he is was charged that on the 8th October 2023, at around 22:30 and earlier on, whilst being at Gallerija, Numru 3, Triq is-Srug, Xaghra and Malsalforn Road, Zebbug, Gozo and/or in these Islands;

- 1) Cultivated the plant *Cannabis* in terms of Section 8 (c) of the Chapter 101 of the Laws of Malta.

- 2) And also with having on the same date, time, place and circumstances had in his possession the drugs (*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 drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs 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 (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta.
- 3) And also with having on the same date, time, place and circumstances failed to observe the conditions imposed by the Court of Magistrates (Gozo) presided by Magistrate Dr. Brigitte Sultana LL.D. on the 16th July 2022 and as subsequently as amended by Judge Hon. Dr. Aaron Bugeja M.A. LL.D. on the 6th March 2023 and that of not committing any other crime of a voluntary nature, this is in breach of article 579 of the Chapter 9 of the Laws of Malta.

The Court was asked to revoke the bail conditions of Joey Hendrikus Joza Johanna Deckers and order his re-arrest, whilst ordering that the sum stated in the bail bond should be forfeited to the Government of Malta as stipulated in article 579 (2)(3) of the Chapter 9 of the Laws of Malta.

Having seen the judgement delivered by the Court of Magistrates (Gozo) As a Court of Criminal Judicature on the 10th October 2023 wherein, the court found the accused **Joey Hendrikus Joza Johanna Dekers** guilty of all the said charges

brought forward against him and condemned him to the payment of a multa for the sum of one thousand five hundred euro (€1,500).

Regarding the application of Article 572(2) of Chapter 9 of the Laws of Malta, the Court ordered the seizure of the sum of one thousand (€1,000) from the amount deposited by the accused as bail guarantee on the 16th July, 2022.

The Court also ordered the seizure of all the objects exhibited by the Prosecution in the course of these proceedings.

The Court also ordered that the acts and a copy of this judgement be scanned to the Attorney General and this within the time period specified by the law.

The Attorney General felt aggrieved by this judgment and filed an appeal in the Registry of this Honourable Court on the 20th October 2023.

Whereas the accused Joey Hendrikus Joza Johanna Deckers was arraigned before the Court of Magistrates (Gozo) as a Court of Criminal Inquiry, on the 10th of October 2023, and was accused with the three charges, namely: the cultivation of cannabis plants, simple possession of the drug cocaine (although the court notes that the second charge speaks of aggravated possession) , and breaching the bail conditions. During the same court sitting, the accused registered a guilty plea towards all charges brought against him and, following a subsequent consultation with his lawyer, he confirmed his guilty plea.

Whereas on the 10th of October 2023, the Attorney General issued the Order (exhibited in the acts of the proceeding and marked as 'Document BCS9') by virtue of sub-article (2) of Article 22 of the Dangerous Drugs Ordinance (Chapter 101), for the accused to be charged before the Criminal Court to answer to the charges against him for violation of the provisions of the said Ordinance.

Whereas the Attorney General had not issued Counter-Order by virtue of Article 31 of the Dangerous Drugs Ordinance (Chapter 101), for the accused to be directed for trial by the Court of Magistrates as a Court of Criminal Judicature.

Whereas, therefore, the applicant humbly submits that the Court of Magistrates was incorrect when it proceeded to deliver the said judgement. Instead, the Court of Magistrates ought to follow the procedure as provided in article 392B of the Criminal Code.

Article 392B of the Criminal Code states the following:

392B. (1) In the case where the accused, in answer to the question in article 392(1)(b) and in any stage of the proceedings, states, that he is guilty of the offence charged and the said offence is liable to a punishment exceeding twelve years imprisonment, the court shall warn him in the most solemn manner about the legal consequences of that reply, and shall allow him a period of time for him to reply. Without prejudice to the provisions of sub-article (3) of article 392A and notwithstanding any other provision of this Code or any other law, if the accused persists in his statement that he is guilty of the offence charged, the court shall, after recording the admission of guilt;

(a) order that the Attorney General, within three (3) working days, be granted access by electronic means to a scanned copy of the record of inquiry, together with the objects relating to the case; and

(b) notify the Registrar of the Criminal Court that an admission of guilt has been made.

(2) The Attorney General shall be allowed the term of one (1) month to present a note in the Criminal Court by which note he shall declare that the charge presented before the Court of Magistrates as a court of inquiry and to which the accused person has admitted guilt, shall be considered as a bill of indictment; such declaration shall not in any way give rise to any nullity or other defect in the proceedings notwithstanding the other provisions of this Code and of any other law.

(3) Where the Criminal Court is notified by the Court of Magistrates as a court of inquiry, about the admission of guilt in accordance with paragraph (b) of sub-article (1), the Criminal Court shall, within two months from the date of notification, appoint the date of hearing.

(4) The Criminal Court shall, either ex officio, upon a request by the Attorney General or by the accused, examine that evidence that it deems relevant for the purposes of punishment, and after examining the submissions by the Attorney General and the accused relating to the punishment, proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.

(5)(a) The accused and the Attorney General may request the Criminal Court to apply a sanction or measure, or, where provided for by law, a combination of sanctions or measures, of the kind and quantity agreed between them, and to which the accused can be sentenced.

(b) If the court is satisfied that the sanction or the measure, or the combination of sanctions and measures requested, as provided for in paragraph (a), is one which it would be lawful for it to impose upon conviction of the offence for which the accused has pleaded guilty, the court shall proceed to pass the sentence indicated to it by the parties declaring in its judgement that the sentence being awarded is being so awarded at the request of the parties.

(c) The provisions of sub-articles (3), (4) and (5) of article 453A shall, mutatis mutandis, apply to this sub-article.

(6) Notwithstanding any other provisions of this Code or any other law, an admission made and recorded according to the provisions of sub-article (1) may not be revoked or withdrawn.

(7) When the Criminal Court deems that a formality was not observed according to this article or there is any other defect in the proceedings, the Criminal Court shall send all proceedings back to the Court of Magistrates as a court of inquiry to commence the inquiry anew.

Consequently, in the view of the above, the Attorney General humbly requested this Honourable Court to annul and quash the said judgement and transmit the record to the Court of Magistrates (Gozo) as a Court of Criminal Inquiry to proceed according to law by virtue of Article 428(4) of the Criminal Code.

The Court heard the parties make their oral submissions during the sitting of the 6th December 2023.

The Court took note of all the acts of the proceedings and the documents exhibited in the acts including an updated conviction sheet of the appellate.

Considered:

That on the 10th October 2023 the appellate was brought to Court before the Courts of Magistrates (Gozo) as a Court of Criminal Inquiry and charged with three main accusations namely cultivation of the drug Cannabis, Aggravated possession of the drug Cannabis and breach of bail conditions in terms of article 579 of the Criminal Code. During this arraignment the accused was assisted by his lawyer Dr Joseph Grech. The charges were read out in the presence of the accused wherein he pleaded guilty to all charges. The Court gave him considerable time to re think his admission of guilt and notwithstanding the explanation given to him with regards to the charges he insisted on registering his guilty plea. The Court erroneously went on to give judgment and condemned the accused appellate to a fine multa of one thousand and hundred euros (€1500).

The Attorney General filed an appeal and stated that the Court of Magistrates did not have the competence to decided this case as the punishment that could be awarded was in excess of that which could be given by the Courts of Magistrates.

The procedure which should have been followed by the Courts of Magistrates (Gozo) as a court of Criminal Inquiry is that set out in Article 392B of the Criminal Code as rightly pointed out by the Attorney General in her application,

*Therefore if in any stage of the proceedings being held before the courts of Magistrates as a Court of Criminal Inquiry an accused states, that he is guilty of the offence charged and the said offence is liable to a punishment exceeding twelve years imprisonment, the court **shall** warn him in the most solemn manner about the legal consequences of that reply, and shall allow him a period of time for him to reply. Without prejudice to the provisions of sub-article (3) of article 392A and notwithstanding any other provision of this Code or any other law, if the accused persists in his statement that he is guilty of the offence charged, the court shall, after recording the admission of guilt;*

This is what happened according to the note verbal registered in the court on the 10th October 2023.

The Court then had to order that the Attorney General, within three (3) working days, be granted access by electronic means to a scanned copy of the record of inquiry, together with the objects relating to the case; and (b) notify the Registrar of the Criminal Court that an admission of guilt has been made.

Then the Attorney General shall be allowed the term of **one (1) month** to present a note in the Criminal Court by which note he shall declare that the charge presented before the Court of Magistrates as a Court of Inquiry and to which the accused person has admitted guilt, shall be considered as a bill of indictment; such declaration shall not in any way give rise to any nullity or other defect in the proceedings notwithstanding the other provisions of this Code and of any other law. This procedure which is mandatory on the Courts of Magistrates as a Court of Criminal Inquiry was not followed in this case.

From then on the law in section 392B (3) to (7) speaks about the duty of the Criminal code as to the procedure it must follow when faced with an admission of this type

This Court thus makes reference to article 428 (4) of the Criminal Code which provides the following

4) If the superior court finds that an appeal entered solely on the ground of want of jurisdiction or of any breach or omission of formalities, is groundless, it shall make a pronouncement to that effect, and shall refer the case to the inferior court

The Court thus is upholding the appeal presented by the Attorney General and refers the case back to the Inferior Courts so that the Inferior Courts will follow what is stated in article 392B of the Criminal Code.

Dr. Consuelo Scerri Herrera

Madame Justice

Margaret De Battista

Assistant Registrar