**Qorti tal-Appell Kriminali**

**Onor. Imħallef Consuelo Scerri Herrera, LL.D., Ph.D.**

**Appell Nru: 18/2023/1**

**Il-Pulizja**

**Vs**

**Roderick Monreal**

**Illum, 10 ta' Lulju 2024**

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant, **Roderick Monreal** iben Joseph u Theresa nee' Micallef imwieled Calarsci Romaia nhar it-13 ta' Jannar 1991 u residenti 13B, Triq San Martin, Rabat, Malta akkużat quddiem il-Qorti tal-Maġistrati (Għawdex) bħala Qorti ta' Ġudikatura Kriminali talli:

Nhar l-1 ta' Settembru 2021, ghall-habta ta' 14:30hrs waqt li kien qieghed ġewwa l-parkegg ma genb Gozo Stadium triq l-Imgarr, Xewkija Ghawdex u fil-vicinanzi;

1. Volontarjament ta in-nar lil bini, vettura,gharix jew lok iehor, f'hin meta ma kien hemm ebda persuna hemm ġewwa, liema bini, vettura, gharix jew lok iehor fejn waqt il-hruq setgha kien hemm xi persuna hemm ġewwa u dan bi ksur tal-artikolu 318 tal-Kap.9
2. U aktar talli fl-istess data,hin,lok u ċirkostanzi volontarjament hassar, ghamel hsara jew gharraq hwejjeg haddiehor, mobbli jew immobbli, liema hsara

taqbeż aktar minn elfejn u hames mitt ewro (€2,500) u li saret ghad-dannu ta' Godwin Mizzi, u/jew persuni ohra u dan bi ksur tal-Artikolu 325(a) tal-Kap.9;

3. U aktar talli fl-istess data, hin,lok u ċirkostanzi volontarjament hassar,ghamel hsara jew gharraq hwejjeg haddiehor, mobbli jew immobbli, liema hsara taqbeż aktar minn mitejn u hamsin ewro (€250) iżda li ma taqbiżx l-elfejn u hames mitt ewro (€2500) u li saret ghad-dannu ta' Gozo football Assosciation u/jew persuni ohra u dan bi ksur tal-Artikolu 325(a) tal-Kap.9;
4. U aktar talli rrenda ruhu reċidiv b'diversi sentenzi mill-Qorti tal-Magistrati li huma definittivi li ma jistghux jiġu mibdula jew mhassra u dan ai termini tal-Artikoli 49 u 50 tal-Kapitolu 9.

Il-Qorti giet ġentilment mitluba sabiex jekk jidhrilha xieraq tipprovdi ghas-sigurta' ta' l-imsemmija Godwin Mizzi minn issa tapplika l-provvediment tal-Artikolu 412C tal-Kodici Kriminali u taghmel ordni ta' protezzjoni taht dawk il-kawtiela li din il-Qorti jidhrilha li huma xierqa.

Il-Qorti giet gentiment mitluba illi minbarra li tinfliggi l-piena stabbilita' mil-ligi, jekk jidrilha xieraq, tipprovdi ghas-sigurta' ta' Godwin Mizzi u terzi persuni sabiex tinżamm il-bon ordni pubbliku flimkien mal-piena jew minnflok il-piena applikabbli ghar-reat, torbot lil hati b'obbligazzjoni tieghu nnifsu taht penali ta' flus li tiġi iffissata mill-Qorti.

Rat is-sentenza tal-Qorti tal-Maġistrati (Għawdex) Bħala Qorti ta' Ġudikatura Kriminali ta' nhar it-28 ta' Lulju,2023, fejn sabet lill-imputat hati tal-imputazzjonijiet kollha mressqa fil-konfornt tieghu u kkundannatu ghall-piena karecrarja ta' erba' (4) snin. In oltre, il-Qorti qieghdet lil hati taht Ordni ta' Trattament ai termini tal-artikoli 412D tal-Kap 9 tal-Ligijiet ta' Malta ghal perijodu ta' tlett snin, liema ordni hija suġġetta ghall-kundizzjonijiet elenkati fid-digriet anness ma' din is-sentenza.

L-ewwel Qorti spjegat b'mod car lil hati l-effetti tal-Ordni ta' Trattament u tal-kundizzjonijiet kollha elankati fid-digriet anness ma' din is-sentenza u l-konsegwenzi legali ai termini tal-artikollu 412D tal-Kap 9 f'kaz li jonqos milli jikkonforma ruhu ma' dawk l-ordnijiet u dawk il-kundizzjonijiet.

Il-Qorti ordnat li kopja ta' din is-sentenza u ta' l-Ordni ta' Trattament ghandom jiġu trasmessi minnufih lid-Direttur tas-Servizzi tal-Probation u Parole sabiex jiġi assenat uffiċjal tal-probatin biex ikun responsabbli ghas-sorveljenza ta' l-istess hati.

Kif ukoll, il-Qorti b'applikazzjoni tal-Artikolu 382A tal-Kapitolu 9 tal-Ligijiet ta' Malta harget Ordni ta' Trażżin fil-konfront ta' l-istess hati a favur tal-vittma, Godwin Mizzi, liema Ordni ta' Trażżin hija soġġetta ghal varji kundizzjonijiet ilkoll kontenuti fl-istess ordni. Din l-ordni ghandha tirriforma parti integrali minn din is-sentenza u ghandha tkun ghal perijodu ta' tlett snin.

Rat ir-rikors tal-appell tal-appellant Roderick Monreal preżentat fir-reġistru ta' din l-Onorabbli Qorti nhar id-9 ta' Awwissu 2023, fejn talab lil din l-Onorabbli Qorti sabiex joghgobha tvarja s-sentenza tal-Qorti tal-Magistrati (Ghawdex) bhala Qorti ta' Gudikatura Kriminali fil-proceduri fl-ismijiet fuq premessi, billi filwaqt li ssib htija fl-appellant ai termini tal-ammissjoni tieghu stess, tiehu in kunsiderazzjoni il-fatti u c-cirkostanzi kollha tal-kaz inkluż l-ghajnuna fl-investigazzjoni u l-ammissjoni bikrija u konsegwentement tirriduci l-piena imposta fuqu ghal piena iktar idonea fic-cirkostanzi tal-kaz.

**<u>L-aggravju</u>**

1. **<u>Pienna eċċessiva</u>**

Illi jirrizulta bl-iktar mod car illi l-piena nflitta fuq l-appellant hija wahda eċċessiva.

Jidher fi-ccar illi l-esponenti kien strumentali fl-investigazzjoni kif ukoll ammetta immedjatament u cioe' fi stadju tassew bikri tal-proceduri.

Illi jirrizukta illi filwaqt li l-Ewwel Onorabbli Qorti ma marritx ghal-massimu tal-piena, lanqas hadet in kunsiderazzjoni d-diversi fatturi li rriżultaw matul is-smiegh tal-kawza relattivi kemm ghal mod kif sehh il-kaz innifsu kif ukoll ic-cirkostanzi ferm partikolari tal-akkuzat li jirriżultaw bl-iktar mod car anke mill-*pre sentencing report.*

Illi jirrizuta li piena karcerarja effettiva ta' erba' (4) snin hija ukoll eċċessiva tenut kont tas-sentenzi li l-ko akkużati tal-imputat inghataw u dana meta kien l-istess appellant li kien wassal lill-pulizija sabiex isolvu dan il-kaz!

Illi jirrizulta ghalhekk kif il-piena illi l-akkuzat jinghata sentenza karcerarja effettiva tant twila hija wahda totalment eċċessiva, ingustifikata fic-cirkostanzi u li effettivament qeghda tippenalizza lil min wara li kkommetta żball mhux biss ammetta imma ghin fl-investigazzjoni sabiex il-gustizzja setghet issir.

Rat in-Nota ta' referenza tal-Avukat Generali prezentata fir-registru ta' din l-Onorabbli Qorti nhar il-5 ta' Dicembru, 2023.

Semghet lill-partijiet jittrattaw il-kaz u dan fis-seduta tat-13 ta' Gunju 2024.

Rat illi din il-Qorti talbet lill-Prosekuzzjoni sabiex tesebixxi l-fedina penali aggornata tal-appellant u dan fis-seduta tat-13 ta' Gunju, 2024 u l-prosekuzzjoni aderiet ma tali talba l-ghada l-14 ta Gunju, 2024.

**Ikkunsidrat.**

Illi din il-Qorti ezamiant bir-reqqa il-provi akkolti f'dan il-process. Jirrizulta li l-appellant tressaq il-Qorti nhar is-6 ta' Settembru 2021, u li fis-seduta tas-19 ta' Setembru,2021 irregistra ammissjoni ghall-akkuzi kif addebitt fil-konfront tieghu u dan anke wara li inghata bizzejjed zmien mill-istess Qorti sabiex l-appellant jirrikonsidra l-ammissjoni teighu fil-prezenza tal-avukat difensur tieghu Dr Deborah Camilleri. Rat illi f'dik l-istess seduta d-difiza talbet li jigi mhejji pre sentencing report u minghajr ma laqghet it-talba, il-Qorti ordnat notifika ta dan il-verbal lid-Direttur tal Probabtion u Parole. Jirrizulta minn ezami tal-verbal tas-seduta tas-17 ta' Novembru, 2021 li l-appellant kie nghadda bank draft fl-ammont ta' €1900 lil Gozo Football Association u rat ukoll li f'dik l-istess seduta l-Qorti ordnat li x-xhieda ta Godwin Mizzi u d-dokumenti esebiti minnu fil-kawza fl-ismijiet **il-Pulizija vs Julian Calleja**, kif ukoll fil-kawza fl-ismijiet il-pulizija vs Gabriel farrugia jigu esebiti fl-atti in

desamina u dan minkejja li tali xhieda ma ttihditx fil-prezenza tal-appellant odjern u dan kontra l-principju li x-xhieda ghandha tinghata viva voce l-Qorti fil-prezenza tal-akkuzat. Cioe nonnostante d-difiza ma oggezzjonatx ghal dan. Rat li d-danni li sofra Godwin Mizzi kienu jammontaw ghal €16,175.34 kif jirrizulta mix-xheida tieghu a fol. 35 tal-process.

Rat il-*pre sentencing report* imhejji mill-Ufficcjal tal-Probabtion Joseph Mizzi esebit fl-atti a fol 50 et seq. Jirrizulta minn ezami tal-istess li l-appellant huwa adottat mir-Rumanija u mea kien zghir kien jigi *bullied*. Cio nonnostante trabba fi familja tajba, ghandu tifel u fil-passat qabad kumpanija hazina tant li spicca jabbuza bid-droga kokaina. Jidher li ghandu problemi ta' *anger management* li irid jahdem fuqu. Irid jghamel certu ghazliet f 'hajtu fir-rigward tal-hbiberiji, li jghazel jindirizza l-problema ta' abbuz ta' droga u jitkellem ma nies professjonali li jistghu jghinuh. L-ufficcjal irrakomanda ukoll li l-Qorti taghti sentenza ta' prigunerija effettiva lill-appellant u li tigi imposta Ordni ta' Trattament. Ghandu jaqta' kul xkiel mill-hajja negattiva, jahdem fuq il-problema dwar l-uzu ta' droga, jimmotiva ruhu u jircievi sapport psikologiku li hija importanti hafna ghaliex l-passat ghadu jigri warajh u izomm il-boghod mill-hajja ta' kriminalita'. Jghid li kellu kaz wiehed biss kriminali fil-passat u dakinhar li xehed l-ufficjal l-appellant ma kellux kazijiet pendenti ohra. Jghid ukoll li l-appellant qatt m'inghata ghajnuna rigward l-abbuz ta' droga u qatt ma gie riferut ghal tali trattament.

Innotat li waqt l-andament tal-gbir ta' provi ta' din il-kawza kien hemm diversi okkazzjonijiet meta l-appellant naqas li jattendi l-Qorti minkejja li kien ikun notifikat tant li anke gie misjub hati ta' disprezz u multat. Rat is-sentenzi li inghataw lill-ko-akkuzati u dan wara li gew esebiti fl-atti waqt is-seduta tas-17 ta' Novembru 2022. Il-Qorti ezaminat dawn is-sentenzi specjalment in vista tal-fatt li l-appellant fir-rikors tal-appell tieghu stqarr li gie trattat differenti minnhom u dan ghaliex huwa inghata erba' snin prigunerija u l-ohrajn hadu piena ferm inqas severa. Jirrizulta li huwa veru li Julian Calleja gie imressaq il-Qorti akkuzat b'erba' reati izda ma kienux l-istess bhal dawk tal-akkuzat odjern. Dan gie akkuzat li kien komplici fl-istess l-ewwel zewg reati moghtja fil-konfront tal-akkuzat oltre li hu recidiv u li kkommetta reat waqt l-perjodu

operattiv ta' liberta kondizzjonata imposta fuqu mill-Qorti u talli hu recidiv. Wara li nstab hati mill-ewwel Qorti dan inghata probabtion ghall-perijdou ta' tlett snin u dan wara li instab hati tal-ewwel, it-tieni u r-raba akkuza fuq ammissjoni tieghu stess oltre ordni biex ihallas lill-Parte Civile is-somma ta' ghaxart elef ewro rapprezentanti parti mid-danni li huwa sofra u li tali hlas kellu jsir f'rati mensili u konsekuttivi ta' €280. F'din is-sentenza l-Qorti irrikonoxxiet diversi fatturi fosthom l-ammissjoni bikrija tal-akkuzat, il-perjodu li ghamel taht arest preventiv, il-koperazzjoni tieghu mal-pulizija u rakkomandazzjonijiet tal-Ufficcjal tal-Probabtion JosephMizzi fil-*pre sentencing report.*

Fir-rigward ta'' Katianne Muscat jirrizulta minn qari tas-sentenza esebita a fol. 103 fok DF2 li din giet akkuzata biss li hija komplici fir-rigward tal-ewwel zewg akkuzi moghtija fil-konfront tal-akkuzat fejn inghatat *conditional discharge* ghall-perijodu ta' tlett snin. Il-Qorti hadet in konsiderazzjoni is-segwenti meta iddecidiet dik il-kawza u cioe l-ammissjoni bikrija taghha, il-fatt li ghandha fedina penali nadifa u li kienet ghadha minuri meta ikkommettiet ir-reati li giet akkuzata bihom

Ghalhekk jinghad li is-sitwazzjoni tal-akkuzat ma hix identika bhal dik tal-ko akkuzati kif donnu implika l-appellant fir-rikors tal-appell tieghu u hu proprju ghalhekk li l-paraguni huma odjuzi. Kuntrarjament ghall-ko akkuzati l-appellant inghata l-liberta provisorja mal-ewwel jum li tressaq il-Qorti. Dwar id-disparita` fis-sentenzi, il-Qrati taghna kellhom diga` okkazjoni[1] jisiltu linji ta' gwida minn sentenzi tal-Qrati Inglizi li jittrattaw sitwazzjonijiet simili. F'Blackstone's Criminal Practice, 2001 (para. D22.47 a fol. 1650) jinghad:

> *"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 judgment in that case, Scarman*

[1] l-Pulizija v. Stanley Spiteri deciza 16 ta Ottubru 2016

*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 Cr 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' (Dickinson [1977] Crim LR 303). If he has, the Court of Appeal will at least consider 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.'"*

*F'Archbold Criminal Pleading, Evidence and Practice, 2006 (para. 5-106, p. 588) jikkummenta 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 gone wrong with the administration of justice?" (per Lawton L.J. 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 R. v. Wood, 5 Cr.App.R.(S) 381. C.A., Fawcett, ante, and Broadbridge, ante. The present position seems to be that the court will entertain submissions based on disparity of sentence 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.*[2]*"*

Filwaqt li fis-sentenza fl-ismijiet '**Ir-Repubblika ta' Malta vs Omissis Brian Godfrey**

[2] Vide Il-Pulizija 'The Republic of Malta v. Tony Johnson' deciza mill-Qorti tal-Appelli Kriminali nhar it-23 ta Ottubru 204 Numru 58/2010

**Bartolo u Omissis'**[3], fost kunsiderazzjonijiet ohra, l-Qorti kkunsidrat li:

*'Dato non concesso li r-reita` ta l-appellant u ta' Aldo Saliba kienet almenu simili jekk mhux identika, din il-Qorti tista` tapprezza li l-appellant hass "a sense of grievance" bid-disparita` fis-sentenza. Dak li trid tezamina din il-Qorti, pero`, huwa jekk il-piena moghtija lill-appellant kenitx wahda severa wisq fic-cirkostanzi jew jekk dik kontra Aldo Saliba tistax titqies bhala miti wisq. Dak li certament mhuwiex accettabbli ghal din il-Qorti hu li biex tirriduci sentenza wahda tohloq sitwazzjoni fejn ikun hemm "two, rather than one, over-lenient penalties".'*

Fl-istess sentenza l-appell ta' Brian Godfrey Bartolo kien gie michud, fejn il-Qorti kienet anke kkunsidrat li:

*'F'dawn ic-cirkostanzi din il-Qorti thossha daqsxejn perplessa mhux bil-piena li giet inflitta fuq l-appellant izda b'dik li giet inflitta fuq Aldo Saliba li hija tqis bhala miti wisq. Dan meta jigi kkunsidrat li l-piena massima li setghet tigi inflitta kienet dik ta' prigunerija ghall-ghomor u f'kaz ta' tnaqqis minhabba cirkostanzi msemmijin fl-ewwel proviso ta' l-artikolu 22 (2)(a) tal-Kap 101 ghal piena ta' prigunerija ghal zmien ta' mhux inqas minn erba' snin izda mhux izjed minn tletin sena u multa ta' mhux inqas minn elf liri Maltin u mhux izjed minn hamsin elf liri Maltin. L-ammissjoni ta' l- akkuzat fi stadju bikri tal-proceduri mhijiex inkluza specifikatament bhala wahda mic-cirkostanzi ndikati ghal tnaqqis fil-piena, izda tali cirkostanza giet accettata mill- Qrati taghna bhala cirkostanza li tista' twassal ghal tnaqqis fil-piena. F'dan il-kuntest issir referenza ghal-linji ta' gwida enuncjati mill-qrati Inglizi ghall-fini ta' riduzzjoni o meno tal-piena f'kaz ta' ammissjoni:*

*" 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 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) 15 Cr App R (S) 526) and so may an offender who, as well as pleading guilty himself, has given evidence against a co- accused*

[3] Deciza mill-Qorti tal-Appell Kriminali fl-14 ta' Novembru, 2002 (Att ta' Akkuza Numru: 11/2000) Decisa nhar it-2 ta' Dicembru 2005

*(Wood[1997] 1 Cr App R (S) 347) and/or given significant help to the authorities (Guy [1999] 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 (1988) 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 (S) 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 facts at odds with that put forward by the prosecution, requiring the court to conduct an enquiry 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: (i) 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." (Blackstone's Criminal Practice, 2001, para. E1.18, p.1789).*

*Il-Qorti taqbel ma' dawn il-linji ta' gwida u zzid tghid li mhuwiex possibbi li jigu elenkati l-kazijiet kollha fejn riduzzjoni ta' piena tkun jew ma tkunx indikata peress li kull kaz ghandu l-fattispecie tieghu. Fil-kaz in ezami, in vista tac-cirkostanzi msemmija, tal-fatt li f'reati bhal dawk in kwistjoni fejn tinhtieg tinghata protezzjoni lis-socjeta`, fejn l-appellant u dawk li kienu ko-akkuzati mieghu nqabdu "red-handed", u fejn il-piena massima li setghet tigi inflitta kienet dik ta' prigunerija ghall-ghomor, tirribadixxi li dik inflitta fl-ewwel sentenza, cioe` fuq Saliba, kienet effettivament miti wisq.'*

In kwantu ghall-kwistjoni ta' disparita` bejn is-sentenza appellata u s-sentenzi 'l ohra citati mill-appellant, filwaqt li bhal ma solitament jinghad il-paraguni huma odjuzi – anke ghaliex ic-cirkostanzi fil-kazijiet citati kienu differenti – bhal ma ntqal f' R. vs Large [3 Cr. App. R. (S) 80, C.A.] dwar il-kwistjoni ta' disparita' f'sentenzi (Archbold Criminal Pleading, Evidence and Practice,2001) (para. 5-174, p.571) :

*"The Court will not make comparisions with sentences passed in the Crown Courts in cases unconnected with that of the appellant. The present position seems to be that the court will entertain submissions based on disparity of sentence 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."* (sottolinear ta' din il-Qorti)

It-test f'**Fawcett** hu f'dan is-sens :

*"Would right-thinking members of the public, with full knowledge of the relevant facts and circumstances, earning of this sentence consider that something had gone wrong with the administration of justice ? (per Lawton L.J. in R vs Fawcett , 5 Cr. App. R. (S) 158 C.A.)"*

Illi ghalhekk din il-Qorti ma hiex ser tikkunsira dak li intqal f'dawk is-sentenzi peress li jirrizulta li l-fatti specie ta' dawk akkuzati ma kienux identici ghal dawk li huwa rinfaccjat bihom l-appellant.

Issa jinghad l-ewwel nett illi fit-termini tal-gurisprudenza ormai kostanti tal-Qrati taghna, meta jkun hemm ammissjoni huwa xi ftit jew wisq odjuz appell minn piena sakemm din tkun tirrientra fil-limiti li tipprefiggi l-ligi. Dan huwa hekk peress illi min jammetti jkun qieghed jassumi r-responsabilita` tad-decizjoni li jkun ha u jirrimetti ruhu ghal kull decizjoni dwar piena li l-Qorti tkun tista' tasal ghaliha. Naturalment dan ma jfissirx li din il-Qorti u Qrati ohra ta' appell ma jidhlux f'ezami akkurat tac-cirkostanzi kollha biex jaraw jekk il-piena nflitta kenitx eccessiva jew le. Mhuwiex normali pero`, 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 dik li tkun inghatat. Ammissjoni bikrija mbaghad mhux bil-fors jew dejjem, jew b'xi forma ta' dritt jew awtomatikament, tissarraf f'riduzzjoni fil-piena (**Il-Pulizija v. David Vella**[4]).

[4] Deciza fit-2 ta Dicembru 2005 mill-Qorti tal-Appelli Kriminali

L-ewwel Qorti meta giet biex taghti l-piena misthoqqa wara li kienet rinfaccjata b'ammissjoni kkunsidrat primarjament in-natura serja ta' dan il-kaz *sic et simplicite*. Din il-Qorti pero' qiset fatturi ohra b'zieda sabiex jiggustifikaw l-ghoti ta terminu ta' prigunerija li ma ssemmewx fl-ewwel sentenza. Fl-ewwel lok kien l-istess Ufficjal tal-Probabtion li rrakomanda li ghandha tinghata sentenza ta' prigunerija ghad-differenza li kien ghamel fil-kaz tal-ko akkzuati. Id-danni kagunati lill-*parte civile* huma kbar u ma jirrizultax mill-atti li l-*parte civile* gie risaldat in toto. Jirrizulta biss li l-appellant hallas is-somma ta' €1,900. Jirrizulta li l-appellant huwa recidiv u dan fuq ammissjoni tieghu stess fejn kien inghata sentenza ta' prigunerija sospiza ghal sena fis-sena 2018 u ma tghallimx minnha peress li rega' kiser dufrejh mal-ligi. Din il-Qorti ma tridx taghti l-impressjoni li dak li jkun m'ghandux ihallas ghal dak li ghamel. Jinghad li filwaqt tal-ko akkzuat gie kkundannat ihallas parte mid-danni sofferti mill-parte civile l-ewwel Qorti f'din il-kawza ma deherilhiex li kellha taghmel kundanna simili ghar-ragunijiet mgharfa minnha u ghalhekk f'dan l-istadju stante li dan hu appell tal-appellant Roderick Monreal u mhux tal-Avukat Generali din il-Qorti m'ghandhiex is-setghat li taghmel tali ordni f'dan l-istadju.

Illi ma hemm xejn differenti li sehh fil-mori ta' dan l-appell li jgieghel lil din il-Qorti tbiddel il-piena inflitta mill-ewwel Qorti *molto piu* meta tqis li tali piena taqa' fil-parametri tal-ligi.

Ghalhekk din il-Qorti qieghda tikkonferma is-sentenza ta' l-ewwel Qorti kemm fir-rigward mertu kif ukol fir-rigward l-piena imposta.

**Consuelo-Pilar Scerri Herrera**
**Imhallef**