



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**DR. RACHEL MONTEBELLO B.A. LL.D.
MAGISTRATE**

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Case No.: 390/2022

THE POLICE

**(Inspector George Frendo
Inspector Francesco Mizzi)**

-Vs-

OLIVER CHANDLER KASSIM

Today, 11th July 2024

The Court,

Having seen the charges brought against **OLIVER CHANDLER KASSIM**, aged 19 years, son of Gamal and Gaynor nee' Kamp, born in the 24th October 2002 in the United Kingdom, residing at 13, Pixxispada, Triq J, Kepler, Mellieha and holder of Maltese identity card number 268556A, who was charged with having on the 20th July 2022 at around 0300hrs of the morning and 0400hrs of the morning in these Islands:-

1. Without intent to kill or to put the life of any person in manifest jeopardy, caused grievous bodily harm on Joe Decelis Maskyuta with a hard object as

certified by Dr. Alexander Paul Grima Reg. No. 5872 of the Emergency Department of Mater Dei;

2. And also for having caused grievous bodily harm on the person of Joe Decelis Maksyuta with arms proper.

The Court was requested that in the case of guilt in pronouncing judgement or in any subsequent order, the accused is sentenced to the payment to the registrar of the costs incurred in connection with the employment in the proceedings of any expert or referee, as contemplated in articles 533 of Chapter 9 of the Laws of Malta.

The Court was also requested to provide for the safety of Joe Decelis Maskyuta by applying the requisites of article 412C of Chapter 9 of the Laws of Malta.

Having heard the accused during the examination plead not guilty to the charges;

Having heard the testimony of the witnesses brought forward by the Prosecution;

Having seen that the Attorney General by means of a note dated 9th February 2024, sent the accused for trial before this Court in respect of the offences under the following articles of law:-

1. Articles 214, 215, 216(1)(b) and 217 of the Criminal Code, Chapter 9 of the Laws of Malta;
2. Articles 31, 382A, 282, 384, 385, 386, 412C, 412D, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having seen the joint application filed by the Prosecution and the defence on the 27th June 2024 where it was stated that the parties have “*in terms of Article 392A of Chapter 9 of the Laws of Malta, agreed to a guilty plea and sentence to be meted out*”, which sentence the parties agreed to be a sentence of imprisonment for two years

suspended for four years with costs to be borne by the defendant, with a request that the Court gives effect to the said agreement.

Having observed that the said joint application was not filed in terms of Article 392A(5) of the Criminal Code since the application was not signed and filed by the Attorney General for the Prosecution, but only by the Inspector representing the Commissioner of Police, and that consequently it would not be bound to take into consideration the agreement for purposes of awarding the sentence in the event of a declaration of guilt;

Having heard the Prosecution declare during the hearing of the 11th July 2024 that although the punishment agreed to in the application was not requested expressly by the Attorney General, the Attorney General nonetheless agreed to and approved the said punishment;

Having heard the defendant register a guilty plea in respect of all charges during the hearing of the 11th July 2024;

Having heard the defendant confirm his guilty plea even after having been afforded the time to reconsider his admission of guilt and to consult with his legal counsel and even after the Court explained to him in simple language, the gravity of the offences with which he is charged and the punishment contemplated by law in the event of a finding of guilt for that offence and also after the Court was satisfied that the accused understood the legal consequences of his admission of guilt;

Having also observed that the accused was aware of the punishment which the Prosecution and the defence agreed to in the joint application filed on the 27th June 2024 and of the consequences should that request be so upheld, and this after clearly explaining to him the said consequences;

Have seen all the evidence and other acts of the proceedings;

Having considered;

That in view of the accused's voluntary and unconditional admission of guilt, in the presence of his legal counsel, the Court has no alternative but to find him guilty of both charges brought against him and proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.

That the defendant is charged with voluntarily inflicting injuries of a grievous nature on Joe Decelis Maskyuta and with having inflicted such grievous injuries with arms proper. These are the crimes envisaged in articles 216 and 217 of the Criminal Code, the latter offence being punishable by a more severe punishment, that of imprisonment for a term from two to ten years. Although the accused's guilty plea was registered at a rather advanced stage of the proceedings, after the Prosecution rested its case, and although the offences charged are of a very serious nature, the Court took into account the accused's completely clean criminal conduct sheet, his young age and the fact that he evidently suffers from difficulties related to mental health.

While the Court is not bound to take into consideration the sentence that the Prosecution and the defence agreed should be awarded, since as already stated, the application was not filed in accordance with the provisions of article 392A(5) of the Criminal Code, it is noted that the agreed sentence does indeed fall within the parameters of punishment applicable upon a declaration of guilt for the offence of grievous bodily harm committed with arms proper.

Above all, it is evident to the Court that both crimes with which the accused is charged were committed by means of the same act which gave rise to more than one offence as a result of the simultaneous breach of more than one provision of law: consequently, the principle of formal concurrence of offences and punishments applies and the Court shall apply only the punishment for the graver offence, that is the offence under article 217 of the Criminal Code.

For these reasons, the Court, after having seen articles 214, 215, 216(1)(b) and 217 of the Criminal Code, finds OLIVER CHANDLER KASSIM guilty as charged upon his own admission, and condemns him to imprisonment for a term of two (2) years but upon application of articles 28A of the Criminal Code, orders that the sentence shall not take effect unless the offender shall commit another crime punishable with imprisonment within four (4) years and thereafter a court competent to do so orders under article 28B that this sentence shall take effect.

In terms of article 533 of the Criminal Code, orders the offender to pay unto the Registrar the total sum of six hundred and forty two Euro and thirty eight cents (€642.38) within three (3) months.

Orders the issue of a Restraining Order in respect of the offender for the protection of the security of Joe Decelis Maskyuta in terms of article 382A of the Criminal Code, for a period of three (3) years.

The Court explained to the offender in ordinary language his liability under article 28B of the Criminal Code if during the operational period he commits an offence punishable with imprisonment.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**