Criminal Court of Appeal

The Hon Madame Justice Consuelo Scerri Herrera, LL.D., Ph.d.

Appeal Number: 122/2024

The Police

Vs

Chloe Marie Giles

Today 10th of April 2025

The Court,

Having seen that the appellant **Chloe Marie Giles** holder of Maltese Identity Card number **237095A**, accused before the courts of Magistrates (Malta) as a Court of Criminal Judicature that:

1. On the 3rd February 2024 at Maria Regina College Middle School, Main street Naxxar and/in other areas of these islands committed theft of cash and other objects which theft is aggravated by means and value which value exceeds two thousand and three hundred and twenty nine euro and thirty seven cents (€2,329.37) to the detriment of Renzo Galea in his personal capacity and/or in his capacity as Headmaster of Maria Regina College Middle School, Naxxar and/or other persons and/or entities.

Having seen the judgment delivered by the Courts of Magistrtaes (Malta) as a Court of Criminal Judicature on the 17th of October 2024, wherein the appellant Chloe Marie Giles, Omissis u Omissis were found guilty of the charge brought forward against them and this upon their own admission and in the light of the reports presented by the Probation Officer Carmen Nygard in regard to each accused person who at the time were all minors, the Court condemned the appellant to the following:

> *In relation to **Chloe Marie Giles,** since this Court is of the opinion that circumstances as stipulated in Article 7(1) of Chapter 446 of the Laws of Malta subsist and after having seen, and in terms of Article 2 and Article 7(1) of Chapter 446 of the Laws of Malta, places the said Chloe Marie Giles under a probation Order for a period of three (3) years from today in terms of Article 7 of Chapter 446 of the Laws of Malta, with the conditions as stipulated in the same Probation Order herewith attached and which forms an integral part of this judgement and consequently orders that the same Chloe Marie Giles is placed under the surveillance of a probation officer as assigned to her by the Director of Probation and Parole Services.*

In terms of Article 7(7) of Chapter 446 of the Laws of Malta, the Court explained to Chloe Marie Giles in simple terms the effects of the Probation Order and the conditions as set out in the attached Decree which forms an integral part of its judgement and that should she fail to abide by the same orders and conditions and/or should she commit another offence during the prescribed operative period of the probation order, she might be condemned to the punishment for which she has been found guilty of by the present judgement, besides the consequences that might ensue should she fail to abide with the conditions set out in the mentioned order.

In term of Article 7(8) of Chapter 446 of the Laws of Malta, the Court ordered that a copy of the judgement and a copy of the Probation Order together with the relative Decree delivered on the same date as the judgment be transmitted immediately to the

Director of Probation and Parole Services in order for the latter to assign a Probation Officer responsible for Chloe Marie Giles surveillance.

The said assigned Probation Officer was ordered to report the progress of the probationer to the Competent Court every three months.

Having seen the appeal of the appellant filed in the registry of this court on the 30th of October 2024 wherein the appellant held the following.

This is an appeal from the punishment inflicted by the first court in regard to the appellant and the appellant basis its grievances on the following:

1. The punishment meted out to the appellant was by far harsher than it should have been given the circumstances of the case.
2. That the court obiter stated that a harsher punishment was being inflicted on the appellant because she showed no remorse, and this is not correct.
3. That there was no reason to distinguish between the punishments of the accused who all had the same involvement.
4. That the appellant admitted immediately her responsibility in this crime. She returned the money she took she collaborated fully with the police in the investigations.
5. The accused was only fourteen (14) years of age when this irresponsible act was committed, and she is a first-time offender wither own challenges.
6. The three accused, all minors who attended or used to attend Maria Regina College Middle School, Naxxar, where outside the school one Saturday afternoon, and they convinced each other to enter the school through a window which was open and whilst in there, entered into the Assistant Headmasters office and stole money from a safe therein. The money was practically divided between them.
7. The accused were identified from CCTV cameras, arrested and spoken to. They admitted their involvement and corroborated with the police. Two of the

accused still had the money they allegedly took and returned same, whilst the appellant had given some of the money to a third party, however she still returned the money to the school upon her being charged in court.

8. The three accused were charged in the Juvenile Court and admitted the charges as proffered, however the Court on the 9th February 2024 could not deliver its sentence since according to Law it had to be the Juvenile court to deliver punishment were minors are involved and the case was remitted to the Juvenile Court.

9. The Juvenile Court, after the accused reiterated their admission of guilt to the charges in their regard, requested a probation officer's report and this report due to industrial action took numerous months to be presented into court and decision was finally delivered as above cited. Chloe Marie Giles was given the above referred punishment for her involvement in this crime.

10. That the appellant's grievances are clear and manifest, they refer to the punishment inflicted on appellant and consist of the following:

11. The punishment meted out to Appellant was by far harsher than it should have been given both the circumstances of the case.

12. 2. That the court obiter stated that a harsher punishment was being inflicted on the appellant because she showed no remorse, and this is not correct.

13. That there was no reason to distinguish between the punishments of the accused who all had the same involvement.

14. That Appellant admitted immediately her responsibility in this crime, she returned the money she took, she collaborated fully with the police in the investigation.

15. The accused was only fourteen (14) years of age when this irresponsible act was committed and she is a first time offender with her own challenges.

Observations about the grievances

16. This is an appeal based solely on the punishment meted out to the appellant. A punishment which was far more harsh than that received and imposed on the two co-accused. A punishment which was also harsher than that recommended by the probation officer who recommended a probation order of eighteen (18) months.

17. Whilst all the three accused admitted their involvement in the crime committed, clearly more blame was unjustifiably pinned on the Appellant. The Appellant is a young teenager who has personal challenges, her communication/ attitude with third parties may be perceived to be as that of a reserved, non-communicative. This circumstance or so-called attitude seems to have negatively impacted the probation officer's report and ultimately on the decision arrived at by the Juvenile Court, who, in its report, declared that the Appellant showed no remorse for what went on.

18. This conclusion cannot be further away than the truth, the accused reacts differently and the fact that due to her condition, she is not open and receptive does not translate to the fact that she shows no remorse. As a person, resulting from various circumstances, she has built an emotional wall around herself. This is a form of defence mechanism against what she interpreted to be abandonment resulting in her adoption apart from possibly a traumatic assault at a young age.

19. The accused puts up a shield in response to all her traumatic experiences. Her interpretation of her circumstances, that of pain and rejection was clearly misinterpreted by the Probation Officer and further by the Court which went beyond, in regards to punishment, what was recommended by the court's own professional expert.

20. This is her character; the accused suffers from ADHD and is receiving treatment for it. She also has other psychological challenges, which she is also addressing as may be confirmed by her counsellor.

21. It is humbly submitted that in the punishment inflicted, her condition was interpreted negatively and evidently the cause of the increase on her punishment. Whilst the other co-accused were given a conditional discharge, Appellant was given a three-year probation period together with a treatment order. There was clearly, in this conclusion, an element of misinterpreting the Appellant's character. There is no doubt that a harsher sentence reinforces in the accused feelings of stigma and of rejection which will only harm her efforts in her recovery process.

22. The appellant is not objecting to the treatment order but is objecting to the three (3) year probation order inflicted upon her, which whilst it is a punishment within the parameters of the Law, it blatantly does not reflect the punishment for the crime committed when all circumstances are considered and is by far different to that inflicted on her co-accused who ultimately carry the same responsibility for the crime. It is a punishment that will carry her through adulthood when she will be looking for employment.

23. It is pertinent to point out, other than the age of the minor, that the minor corroborated with the police during the investigation, admitted to her crime at the first opportunity given to her, reconfirmed her guilt in front of the Juvenile Court, returned the money she took and more and the day after the crime they tried to remedy matters by returning the stolen items however the gates were closed, however all these mitigating circumstances do not seem to be reflected in the punishment meted out to Appellant. One fears to consider what would have been her punishment, if this measure of punishment is correct, given and considering all the mitigating circumstances if she had not benefitted from same.

Having seen the reply of the Attorney General presented in the acts of these proceedings on the 30th of October 2024.

Having heard the parties make their oral submissions during the sitting of the 13th of March 2025.

Considers further,

This is an appeal from the punishment inflicted by the first court in regard to the appellant and the appellant basis its grievances on the following:

1.The punishment meted out to the appellant was by far harsher than it should have been given the circumstances of the case.

2.That the court *obiter* stated that a harsher punishment was being inflicted on the appellant because she showed no remorse, and this is not correct.

3.That there was no reason to distinguish between the punishments of the accused who all had the same involvement.

4.That the appellant admitted immediately her responsibility n this crime. She returned the money she took she collaborated fully with the police in the investigations.

5.The accused was only fourteen (14) years of age when this irresponsible act was committed, and she is a first-time offender wither own challenges.

It is well known in our local jurisprudence especially from the judgments delivered in recent years that it is not desirable for the superior courts to disturb the discretion exercised by the first court in awarding punishment. However, this discretion has to be based on the articles at law which provide the basis for the exercise of such discretion. In fact, in the case in the names **Il-Pulizija vs. Spiru Muscat**[1] lthe court held that:

> *"Issa fit-termini tal-Ġurisprudenza ormai kostanti tal-Qrati tagħna, meta jkun hemm ammissjoni huwa xi ftit jew wisq oduż appell minn piena sakemm din tkun tirrientra fil-limiti li tiprefiġġi l-liġi. Dan huwa*

[1] Decided by the Criminal Court of Appeal on the 15th February 2002

hekk peress illi min jammetti jkun qiegħed jassumi ir-responsabbilita' tad-deċiżjoni li jkun ħa u jirrimetti ruħu għall kull deċiżjoni dwar piena li l-Qorti tkun tista' tasal għaliha.....M'huwiex normali pero li tiġi disturbata d-diskrezzjoni ta' l-Ewwel Qorti jekk l-piena nflitta tkun tidħol fil-parametri tal-Liġi u ma jkun hemm xejn x'jindika li kellha tkun inqas minn dik li tkun ingħatat"

This same forma mentis of the Criminal Court of Appeal is also reflecte4d in other cases namely **Il-Pulizija vs. Massimiliano Maurizio** [2], **Il-Pulizija vs. Jeremy James Farrugia**[3] u **Repubblika ta' Malta vs. Eleno sive Lino Bezzina** [4]. This jurisprudence dictates that the Criminal Court of Appeal should only change the punishment inflicted by the first court in those cases where the punishment is not entirely based on a section at law. This principle was further crystallised in the case in the names **il-Pulizija vs. Joseph Attard** [5] where the court held that:

"Il-Qorti tal-Appell rarament tbiddel il-piena li tkun imponiet l-ewwel Qorti. Dan taghmlu biss meta jkun manifestament evidenti li dik il-Qorti tkun imponiet xi piena mhux kontemplata mill-ligi ghar-reat in ezami, jew tkun xi piena harxa wisq jew sproporzjonata ghal dak li jkun ghamel il-hati, jew tkun xi piena mhux fil-parametri tal-ligi."

Thus, it is through this lens that this Court will be going through the evidence once again to see whether the first court was incorrect in awarding a probation order.

Before going through the evidence, the court also refers to the grievance of the appellant that she was not treated the same way as the co accused who were not given a probation order but a conditional discharge. In spite having the same involvement and all being minors at the time of the commission of the offence. In relation to this

[2] Decided by the Criminal Court of Appeal on the 13 th November 2003.
[3] Decided by the Criminal Court of Appeal on the `14th October 2005
[4] Decided by the Criminal Court of Appeal on the 24th April 2003
[5] Decided by the Criminal Court of Appeal on the 26th January 2001

principle regarding lack of proportionality reference is made to the following judgments delivered by this court in the names: -

i. **Il-Pulizija vs. Aronne Cassar**[6] u **Il-Pulizija vs. Noel Frendo**[7]

ii. **Ir-Repubblika ta' Malta vs. Omissis u Brian Godfrey Bartolo**[8] u

iii. **The Republic of Malta vs. Omissis and Perry Ingomar Toornstra**[9]

The last two judgments cited with approval paragraphs from BLACKSTONE'S CRIMINAL PRACTICE and from ARCHBOLD, "Criminal Pleading, Evidence and Practice", who examined what the English courts do in similar circumstances and this to be able to have guidelines.

-BLACKSTONE'S 2001, (para. D22.47 p.1650) provides:-

> *"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 judgement in that case, Scarman 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*

[6] Decided by the Criminal Court of Appeal on the 28th October 2004
[7] Decided by the Criminal Court of Appeal on the 28th October 2004
[8] Decided by the Criminal Court of Appeal on the 14th November 2002
[9] Decided by the Criminal Court of Appeal on the 12th June 2003

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 Crim 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' (Dickenson [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."

ARCHBOLD (2001 para. 5-174,p.571 argus the following :-

> *"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 one wrong with the administration of justice****?" (per Lawton LJ 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 in R. v. Wood … Fawcett, ante and Broadbridge, ante. The present position seems to be that the court will entertain submissions based on disparity of sentences 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."*

The Court thus went on to examine the acts of these proceedings.

It transpires from the acts that the appellant was arraigned in court on the 10th of February 2024 a few days after the offence of aggravated theft took place. On this same day the appellant pleaded guilty to the charge as evidenced from the examination carried out by the court exhibited in the acts of the proceedings at page 13.

The Court also took note of the joint application signed by the Attorney General and the defence lawyer of the appellant wherein they stated that they were agreeing that the Court should award a probation for a period of three years in view of her admission. The Court took note of the statement released by the appellant voluntarily on the 9th of February 2024 exhibited at fol. 56 of the proceedings. From an examination of this statement, it transpires that the appellant had cooperated fully with the investigating officer and explained in detail what happened on the day in question when she together with the two co-accused committed the aggravated theft.

Despite this joint application filed in the acts of these proceedings the Court went on to appoint a probation officer upon the request made by the defence so that a pre-sentencing report can be presented.

On the 18th of July 2024 the probation officer Carmen Nygard gave evidence. She confirmed that the stolen money was all returned. She states that the appellant has had mental problems so much so that she was under the care of a psychiatrist and psychologist and that her parents want the best for her. She stats that the appellant is a first-time offender. It is true that she has psychological problems and that it was her idea that the accused should all steal from their former school. She states that due to her psychological and psychiatric issues and wayway behaviour there may be chances of her re-offending if not properly addressed. She stated that is necessary that the appellant complies with her treatment and cooperate with the professionals to avoid re-offending for this reason, an element of care and control is deemed necessary. She suggested that the probation order should be for a period of eighteen months, and it is necessary that she complies with the treatment and guidance given by the professionals.

It appears that it was the appellant who induced the co-accused to commit the offence even though she knew they were reluctant. The court is underlining this to show that not all the circumstances of the case are the same for all three co-accused. The personal circumstances are different. It appears that the appellant was the principal of this crime and the co-accused were the accomplices and that they do not seem to have the

same personal mental problems as the appellant. It is for this reason that the first court treated the three accused differently when sentencing.

It is weird to sew the defence agree to a probation order for three years being given to the appellant in her joint application and then file appeal because this same order was granted. The court is not of the idea that there should be a change in the punishment awarded and thus confirms the judgment of the first court in its entirety as it is being done for her benefit to keep her on the right road with the guidance of a professional probation officer.

Thus, this court is also confirming the conditions of the Probation Order attached to the judgment delivered by the first court as well as the Treatment Order issued at the same time.

The Court orders in terms of article 7(8) of chapter 446 of the Laws of Malta that this judgment together with the Treatment order and the conditions of the Probation Order are notified to the Director of Probation and Parole Services so that the latter may assign a probation officer responsible for the surveillance of the appellant.

This court also explained to the appellant in terms of Article 7(7) of Chapter 446 of the Laws of Malta the conditions laid down in the Probation Order and her obligation to follow them and what would happen if she were to fail to abide by them.

Dr Consuelo Scerri Herrera
Madame Justice

Maria Grech
Deputy Registrar