



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
MICHAEL MALLIA**

Seduta tat-18 ta' Marzu, 2010

Appell Kriminali Numru. 216/2009

**The Police
(Insp. Norbert Ciappara)**

Vs

Adam Paul Done

This, (18th) day of March, 2010

The Court,

Having seen the charge brought against the appellant Adam Paul Done before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 7th April, 2006 and during the past weeks prior to this day :

- a) Trafficked or otherwise procured or trafficked the resin extracted from the plant Cannabis, or any preparation of which such resin formed the base in terms of Section 8(b) Chapter 101 Laws of Malta;
- b) Been in possession of the resin obtained from the plant Cannabis or any other preparation of which such

resin formed the base, in terms of Section 8(a) of the Chapter 101 of the Laws of Malta, which drugs (cannabis resin) was found in the circumstances which dictate that the drugs were not intended for personal use.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 11th June, 2009, by which, after that Court had seen articles 8(a), 8(d), 22(1)(a), 22(2)(b)(i) and 29 of Chapter 101 of the Laws of Malta and section 37 of Chapter 9 found the appellant guilty of both charges laid against him and condemned him to a term of two months imprisonment and to the payment of a fine (multa) of €235 which fine (multa) may be paid in monthly instalments of €50 each with the first payment being effected within 4 weeks. Should any part of the fine not be paid, then the part so unpaid is to be converted into a term of imprisonment at the rate of 1 day for every €11.65 not paid.

In accordance with section 533 of Chapter 9, the Court ordered the appellant to pay any expenses involved in the appointment of experts during the Inquiry as the Magisterial Inquiry was held after the 16th January 2006. The Court ordered the destruction of the drug under the supervision of the Registrar.

Having seen the application of appeal filed by appellant on the 22nd June, 2009, wherein he requested this Court to reform the judgement according to the following (i) by confirming that part of the judgement were the First Court found the accused guilty as charged and (ii) revoke that part of the sentence were the First Court imposed the prison term of two months and payment of a fine by imposing a more lenient sentence.

Having seen the records of the case.

Now duly considers.

That the grounds of appeal of appellant can be briefly summarised as follows:-

That after having filed a guilty plea from the very initial stages of the proceedings (even whilst releasing the police statement at the police headquarters) this appeal application concerns only the issue of the punishment as handed by the First Court. Now the accused is aware that our Courts of Appeal have declared on more than one occasion that appeals after filing a guilty plea before the First Court are not exactly looked at very positively, especially if the punishment given was one within the parameters as established by law. However, basically this appeal is all about whether our system thinks it is more apt for society to put Done in jail or not. If one is to leave with the premise that the appellant ought to serve a jail term then this appeal will fall short. If on the other hand one were to indulge in an objective exercise as to what is going to benefit society were the judgement to remain unaltered, then definitely one would opt for a judgement that would spare the minor an effective prison term.

The First Court had opined that one should go for the minimum prison term established by law in such cases. In actual fact in all fairness the First Court went below the minimum term when handing punishment. However, accused submits that in these special circumstances a prison term should have been avoided all together. The minimum established by law is of six months imprisonment. The accused benefited from section 29 of Chapter 101. A decrease of two degrees (the First Court seems to insist on not explaining to a person who is going to serve a prison term after he chose to collaborate on whether it is applying a decrease of one or two degrees when handing down punishment. Truly the Court is not obliged to do so, but by so doing we would be encouraging informers to supply more sensitive information than just telling us from where a few grams of dope was purchased) would bring down the term from a minimum of six months to one month imprisonment. Moreover, the accused was still a minor when committing the crime and so a further reduction could have easily removed the obstacle of having to order an obligatory prison term in cases similar to the one in question.

The accused also refers to other issues in this case, namely the fact that he filed a guilty plea at such an early stage, the fact that he was still a minor, the fact that he fully collaborated, the facts as portrayed in the social report handed over to the Court before reading judgement, the fact that the entity of the trafficking was in its initial small stages and was immediately curbed, the fact that the accused realized that he was in the wrong and changed his lifestyle to a more decent one, the fact that a prison term would emotionally destroy this minor, more so after having lost two very close relatives of his in such a short period, the fact that he is still studying and that having to serve a prison term would be disastrous from an academic point of view. All these reasons could be individually amplified, however, the accused humbly submits that given the special circumstances the First Court should not have handed a prison term. Our Courts have already spoken of special circumstances when dealing with drug related cases. The appellant shall refer to two particular judgements where defence lawyer was involved as defence council namely the cases of "The Police vs Marco Galea" decided by the Court of Criminal Appeal 5.5.2008 and "The Police vs Wayne Cutajar" decided by the Court of Criminal Appeal on the 16.7.2008. On both occasions our Courts went into great depths so as to avoid "destroying" the appellants for reasons and circumstances which are identical to those of the accused except for the fact that the accused here was a minor during the commission of the crime.

Considers :

That appellant is basing his appeal solely on the basis that the prison term awarded may in this case be excessive and counter productive considering that four years have passed since the incident and that in the meantime appellant has reformed himself.

This is born out by the welfare officers' report who detailed the personal problems appellant had to face. The death of his mother and grandmother within a few months of each other and being still of a tender age (16 years)

easily fell to the pressures of his peers who were at the time not exactly of the finer sort.

Appellant brought to the attention of the Court that being a minor at the time of the commissioning of the crime should have mitigated in his favour as should have the application of Section 29 of Chapter 101 of the Laws of Malta as recommended by the prosecuting officer on the day of the first hearing the 4th of April, 2008 where also a guilty plea was entered.

The Attorney General argued that the appellant brought about the situation on himself. Nevertheless he may have indeed reformed but it is up to the Court to determine whether this is a genuine case and not one of the many so called (reformers) that are only so for the duration of the proceedings, only to revert in own ways once they are off the hook.

Considers :

That after reviewing this case, considering that the facts are not in dispute, and particularly the welfare officers' report, this Court is of the opinion that appellant deserves another chance.

It is not normal for this Court to disturb the discretion of the Magistrates' Court once it results that the judgement was reasonable and legally correct, as is this case. But appellant seems to have indeed reformed and given his back to the old ways.

The Court realizes that appellant passed through a difficult time when he lost two members of his close family within a few months of each other and this must have effected him psychologically and academically because he did not do so well at school.

It is good that appellant is now attending an IT course at MCAST and the Court augers that he continues with his studies to graduation which would make it easier for appellant to find a stable job.

No doubt appellant will have the support of his family especially his long suffering father who had to content not only with the death of his wife, so close after moving to a new home, but also with the wayward ways of his son.

The Court hopes that appellant realizes this and makes life easier for himself and his family by continuing a road to recovery and making his family proud.

The Court augers that appellant takes this advice seriously and will not let down the trust that this Court is placing in him. He must realize that all this is being done for his own benefit and that of society at large that stands to gain from a reformed appellant who should than be able to give his contribution for his own betterment and that of the society he lives with. Should he not heed this advice and return to his old ways, he will no doubt sooner or later caught out and brought before these Courts. Appellant should not then expect any leniency, for the Courts would not have any option but to make appellant face the consequences of his actions, no amount of pleading will save appellant from a custodial sentence.

Having said this the Court sincerely hopes that appellant will do well. He has a long future ahead of him and the choices he makes will determine whether he makes a success or otherwise.

He has made a wrong choice in the past but that can now be remedied. He's fortunate that it can be, others were not so lucky.

It will be best for appellant to now look ahead without forgetting the past and make sure that past mistakes are not repeated. Life is too precious to be held up by wrong choices and interminable Court proceedings.

The Court therefore upholds the appeal and whilst confirming that part of the judgement where the First Court found the appellant guilty as charged, reforms that part of the sentence where the First Court imposed an

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effective prison term of two months and the payment of a fine, in the sense, that having seen article 28A of the Criminal Code orders that the prison term be suspended for a period of one year, all other terms and conditions for the payment of the fine and expert's fees to remain unaltered.

< Sentenza Finali >

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