



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 9th March, 2011

Criminal Appeal Number. 457/2010

The Police

v.

Michael Leonard Paul Hammond

The Court:

Having seen the charges brought by the Executive Police against Michael Leonard Paul Hammond that on the 21st September 2009 at about 11:05hrs at Triq ix-Xatt, Gzira:

(1) he drove vehicle No DBL-926 when he had his driving licence suspended and was disqualified from driving by a Court sentence given to him by the Court of Magistrates (Malta) dated 1st April 2009 by Magt. Dr. S. Demicoli LL.D;

(2) he thus drove vehicle No DBL–926 when he was not covered by a policy of insurance in respect of third party risks.

The prosecution requested that the said Michael Leonard Paul Hammond be disqualified from holding or obtaining any driving licences for a period of time that the Court deems fit;

Having seen the judgment of the Court of Magistrates (Malta) of the 21st October 2010 whereby that Court, after hearing the said Michael Leonard Paul Hammond's guilty plea, and after having seen section 59 of Chapter 65 and section 3 of Chapter 104 of the Laws of Malta, found him guilty as charged and condemned him to one year imprisonment but ordered that this sentence does not take effect unless during a period of four years from the date of judgement he commits another offence punishable with imprisonment. That Court furthermore, by virtue of section 3(2A) of Chapter 104 of the Laws of Malta, disqualified the said Michael Leonard Paul Hammond from obtaining or possessing any driving licence for a period of two years from date of judgement;

Having seen the appeal application filed by the said Michael Paul Leonard Hammond on the 2nd November 2010 whereby he requested that this Court reforms the judgement appealed from by "giving a punishment which is less excessive and more just and equivalent to this case";

Having seen the record of the case;

Having seen the decision delivered today whereby the preliminary plea raised by the prosecution as to the nullity of the application of appeal as it does not conform to the provisions of section 419(1)(a) of the Criminal Code was dismissed;

Having heard submissions with regard to the appeal;

Having considered:

This appeal refers to the punishment meted out by the first Court and which appellant deems to be excessive. He refers to the fact that he admitted the charges brought against him at an early stage of the proceedings, that he is in a financially critical situation and that his work and income is derived mainly through driving his vehicle on a daily basis.

This Court has had occasion to remark several times that appeals against punishment following the entering of a plea of guilty will only be considered favourably in exceptional cases. It is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the first Court as regards the *quantum* of punishment unless such discretion has been exercised outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.

Now, appellant was found guilty in terms of section 59 of Chapter 65 of the Laws of Malta which provides, *inter alia*, for a punishment of imprisonment not exceeding six months, and in terms of section 3 of Chapter 104 of the Laws of Malta which, in subsection (2)(b) thereof, provides, *inter alia*, for a punishment of imprisonment not exceeding six months. The first Court failed to apply section 17(b) of Chapter 9 of the Laws of Malta whereby a person guilty of more than one crime liable to temporary punishments restrictive of personal liberty, shall be sentenced to the punishment for the graver crime with an increase varying from one-third to one half of the aggregate duration of the other punishments. Consequently the term imposed by the first Court necessarily has to be reduced.

As to the submissions made by the defence, this Court points out that the first Court took into consideration the fact that appellant admitted the charges brought against him. Moreover, if appellant is so concerned about his work, he should have abided by the previous judgement

Informal Copy of Judgement

and not driven his car when his driving licence was suspended.

For these reasons:

The Court reforms the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 21st October 2010 in the names **The Police v. Michael Leonard Paul Hammond** by revoking it insofar as it condemned appellant to one year's imprisonment suspended for four years and instead condemns him to nine months imprisonment suspended for four years in terms of section 28A of Chapter 9 of the Laws of Malta, and confirming the rest, saving that the operational period of the suspended sentence shall commence running from today and the disqualification from obtaining or possessing a driving licence shall commence running from today. This Court explained to appellant in ordinary language his liability under article 28B if during the operational period he commits an offence punishable with imprisonment. The Court draws the Court Registrar's attention to his responsibility under section 28A(8) of Chapter 9 of the Laws of Malta.

< Final Judgement >

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