Qorti tal-Appell Kriminali

Onor. Imhallef Dr. Edwina Grima LL.D.

Appell Nru: 434/2014

Il-Pulizja

Spettur Nikolai Sant

Vs

Mark Anthony Morales

Illum 16 ta' Dicembru, 2015

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant Mark Anthony Morales, detentur tal-karta tal-identita Maltija bin-numru 270786M, quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli:

Nhar it-28 ta' Ottubru, 2013 u fl-erba' snin ta' qabel din id-data, gewwa dawn il-Gzejjer:

1. Kellu fil-pussess tieghu ir-raza mehuda mill-pjanta Cannabis jew xi preparazzjonijiet li jkollhom bhala bazi din ir-raza bi ksur tal-Art. 8(a) tal-Kap 101 tal-Ligijiet ta' Malta.
2. Kellu fil-pussess tieghu il-pjanta Cannabis kollha jew bicca minnha bi ksur tal-Art 8(d) tal-Kap 101 tal-Ligijiet ta' Malta.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali, moghtija fis-17 ta' Ottubru, 2014, fejn il-Qorti wara li rat l-Artikoli 8(a) 8(d), 22(1)(a) u 22(2)(b) tal-Kapitolu 101 tal-Ligijiet ta' Malta, r-Regolament 9 tal-Legislazzjoni Sussidjarja 101.02, fuq ammissjoni, sabet lill-imputat hati tal-imputazzjonijiet kif migjuba fil-konfront tieghu, izda fid-dawl tal-kunsiderazzjonijiet fuq maghmula u b'applikazzjoni tal-Artikolu7 tal-Kapitolu 446 tal-Ligijiet ta' Malta, qed tqieghdu taht Ordni ta' *Probation* ghal zmien sena mil-lum, bil-kundizzjonijiet kontenuti fl-istess

Ordni hawn anness, liema Ordni ghandha tifforma parti integrali minn din is-sentenza.

Il-Qorti wissiet lill-hati bil-konsegwenzi skond il-Ligi jekk huwa jikkommetti reat iehor matul dan il-perjodu ta' *Probation* jew jekk jonqos illi jsegwi xi wahda mill-kundizzjonijiet stipulati fl-Ordni tal-*Probation.*

Il-Qorti tordna li kopja ta' din is-sentenza tintbghat lid-Direttur tas-Servizzi tal-*Probation and Parole.*

Finalment, il-Qorti tordna d-distruzzjoni tad-droga u/jew l-affarijiet relatati mal-abbuz tad-droga, Dokument NS2, hekk kif din is-sentenza tghaddi in gudikat, u dan taht il-harsien tar-Registratur li ghandu jirredigi process verbal li jiddokumenta l-procedura tad-distruzzjoni, liema dokument ghandu jigi inserit fl-atti ta' din il-kawza mhux aktar tard minn hmistax-il jum minn tali distruzzjoni.

Rat ir-rikors tal-appell ta' Mark Anthony Morales, pprezentat fir-registru ta' din il-Qorti fis-27 ta' Ottubru, 2014, fejn talab lil din il-Qorti tvarja s-sentenza billi filwaqt li tikkonfermha f'dik il-parti fejn l-esponent instab hati tal-akkuzi kif dedotti, thassar u tirrevoka dik il-parti fejn l-esponent gie ikkundannat ghall-sena probation.

Rat l-atti u d-dokumenti kollha.
Rat il-fedina penali aggornata ta' Mark Anthony Morales esebita mill- prosekuzzjoni fuq ordni tal-Qorti.

Rat illi l-aggravji tal-appellant huma s-segwenti w cioe':-

Illi l-aggravju huwa car u manifest u jikkonsisti fil-fatt li l-Onorabbli Qorti tal-Magistrati ghaddiet sabiex tippronunzja din l-ordni ta' probation met aferm vicin li Stat ser ikun qed jidikriminalizza fil-qasam tad-drogi.

Illi di più ma jidhirx li l-esponenti, tenut kont tal-età tieghu, tal-fatt li ghandu hajja stabbli, tal-fatt li huwa f'impjieg u tal-ambjent socjali tieghu, jehtieglu jkollu ufficjal tal-probation addett mieghu. Tabilhaqq jinghad li tenut kont tal-ammont ta' xoghol li ghandhom il-probation officers ikun iktar opportun li l-hin taghhom jiddedikawh ghal min tabilhaqq jehtieg is-sorveljanza ta' probation officer. Ma jidhirx li dan huwa l-kaz tal-esponent.

Ikkunsidrat,

Illi l-imputat qieghed iressaq l-impunjattiva tieghu kontra il-piena inflitta fuqu fid-decizjoni appellata u dan billi huwa tal-fehma illi l-applikazzjoni ta'l-artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta' Malta ma kenitx wahda idonja ukoll fid-dawl tal-fatt illi recentement il-legislatur implimenta d-dekriminilizazzjoni fil-qasam tad-drogi.

Illi il-Qorti fliet bir-reqqa id-decizjoni appellata u l-konsiderazzjonijiet li wassluha sabiex tohrog Ordni ta' Probation fil-konfront ta'l-appellanti. Illi b'mod ewlieni l-Ewwel Qorti qieset bhala fattur determinanti dak ammes mill-appellanti stess meta gie interrogat mill-pulizija illi huwa kien ilu jabbuza mid-drogi ghal madwar erba' snin qabel l-arrest tieghu fl-2013, b'dan illi huwa jista' jitqies bhala *habitual abuser* billi jikkonsma zewg *joints* fil-gimgha, oltre kundanna precedenti in konnessjoni mal-vizzju tad-droga (ecstasy u cannabis) ftit snin qabel fl-2006. Illi l-ghan tal-legislatur wara l-emendi recenti li saru ghal-ligi dwar id-droga, kien illi tinghata ghajnuna lil dawk il-persuni li jinsabu afflitti minn dan il-vizzju u dan billi inbniet struttura shiha li twassal ghall-evalwazzjoni tas-suspettat jew akkuzat biex b'hekk tinghata ghajnuna preventiva qabel ma ikun tard wisq. Ghalkemm jista' jkun illi l-vizzju ta'l-appellanti huwa wiehed ikkontrollat, madanakollu l-Ewwel Qorti ma ghamlet xejn hazin meta dehrilha illi imponiet supervizjoni fuq l-appellanti, anke ghal zmien qasir, billi dan jista' iwassal sabiex jigu evitati konsegwenzi aktar serji. Illi l-appellanti izda dehrlu illi din l-id ta' ghajnuna li kienet qed testendielu l-qorti kellu jirrifjutaha ghaliex fil-fehma tieghu din ma ghandux bzonnha. Il-Qorti ma tistax tifhem kif l-appellanti dehrlu illi kienet qed issir ingustizzja mieghu meta minflok kundanna inharrget Ordni ta' Probation fil-konfront tieghu sabiex jekk ikun il-kaz huwa jiehu ghajnuna tempestiva ghal problema li ghandu. Fuq kollox hija fid-diskrezzjoni ta'l-Ufficjal tal-Probation li jigi adett mal-appellanti sabiex iqies il-gravita tal-problema u jevalwa l-ammont ta' ghajnuna li l-appellanti ghandu bzonn.

Illi din il-qorti ta' revizjoni bhala regola tissindika l-piena erogata mill-Ewwel Qorti (li fuq kollox f'dan il-kaz lanqas tista tigi ikkunsidrata bhala piena) biss meta dik il-piena tkun b'xi mod "*wrong in principle*" jew "*manifestly excessive*".

"…As is stated in Blackstone's Criminal Practice 2004 (supra):

""The phrase 'wrong in principle or manifestly excessive' has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. Thus in Nuttall (1908) 1 Cr App R 180, Channell J said, 'This court will…be reluctant to interfere with sentences which do not seem to it to be wrong in principle, though they may appear heavy to individual judges' (emphasis added). Similarly, in Gumbs (1926) 19 Cr App R 74, Lord Hewart CJ stated: '…that this court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence there must be some error in principle." Both Channell J in Nuttall and Lord Hewart CJ in Gumbs use the phrase 'wrong in principle'. In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to 'wrong in principle') words to the effect that the sentence was 'excessive' or 'manifestly excessive'. This does not, however, cast any doubt on Channell J's dictum that a sentence will not be reduced merely because it was on the severe side – an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed."

This is also the position that has been consistently taken by this Court, both in its superior as well as in its inferior jurisdiction.[1]"

Affermati dawn il-principji dottrinali, ma jidhirx illi fl-erogazzjoni tal-piena inflitta fuq l-appellanti, li fuq kollox hija wahda reformattiva u mhux punittiva, l-Ewwel Qorti imxiet b'mod manifestament ingust ma'l-appellanti.

[1] The Republic of Malta vs v. Kandemir Meryem Nilgum and Kucuk Melek tal-25 ta' Awissu 2005

Ghal dawn il-motivi l-appell qed jigi michud u s-sentenza appellata ikkonfermata.

(ft) Edwina Grima

Imhallef

Franklin Calleja

Deputat Registratur