

The Court of Magistrates (Malta)

As a Court of Court of Criminal Judicature

Magistrate Dr Aaron M. Bugeja M.A. Law, LL.D. (melit)

The Police

(Inspector Sergio Pisani)

vs

Andrea BENINI

The Court after seeing the charges in respect of **Andrea BENINI**, holder of Italian passport number YA6542966 who was charged with having on the 19th August 2015 at around 19:30 at Triq ix-Xatt, Gżira, Malta :

whilst in Malta he knowingly received or purchased a vehicle namely a Land Rover, Range Rover, Registration number BO55ZNC which was reported stolen from the UK, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or shall knowingly take part, in any manner whatsoever, in the sale or disposal of the same.

Having seen that during the examination of the accused in terms of Article 392 and 370(4) of the Criminal Code the accused declared that he found no objection to his case being dealt with summarily;

Having also seen that the Attorney General declared by means of a note exhibited at fol 7 that he granted his consent to this case being dealt with summarily;

Having seen that in reply to the question posed by the Court in terms of Article 392(1)(b) of the Criminal Code the accused declared that he was guilty as charged.

In view of this declaration the Court warned the accused in the most solemn manner about the consequences arising from his guilty plea and granted him sufficient time in order for him to retract this guilty plea, had he so wished. After that the Court granted this time to the accused, and after consulting with his legal counsel, the accused reiterated that he was guilty as charged.

In view of this declaration, duly reiterated, the Court had no option but to find the accused guilty as charged.

Having seen the records of the proceedings as well as the criminal record sheet of the accused.

Having heard the final oral submissions of the Prosecuting Officer and of the Legal Counsel to the accused.

Having seen the documents submitted;

Having seen that on the sitting of the 5th November 2015 the Court ordered the Director of Probation and Parole Services to draw up a report in terms of Articles 11 and 18 of Chapter 446 of the Laws of Malta.

Having seen the report confirmed on oath by Probation Officer Donalise Livori during the sitting of the 4th December 2015;

Having heard the final oral submissions of the Prosecuting Officer and of the Legal Counsel to the accused following which the Court adjourned this case for judgment in terms of Article 377 of the Criminal Code.

This Court considered that :-

In view of his unconditional guilty plea the Court is bound to find the accused guilty as charged.

The Court took note of the submissions :

- (a) registered by the Prosecuting Officer namely that in this case the accused cooperated with the Executive Police during the investigation stage as well as the plea that in this case the Court could consider imposing a community service order against the accused.
- (b) Registered by Defence Counsel in the sense that the accused: -

- i. cooperated fully with the Executive Police;
- ii. he admitted the charges brought against him at the first available opportunity;
- iii. he handed over the keys immediately and provided all the documentation relative to the vehicle in question;
- iv. he moved to Malta and was residing in this country together with his wife of Maltese origins and their family;
- v. he had a clean criminal record sheet;
- vi. he was willing to see the vehicle being returned to its rightful owners;
- vii. ought to be given a minimum punishment in light of the above.

The Court understands that the accused was cooperative with the Police; however on the otherhand he admitted the charges proffered against him and therefore he admitted the crime of knowingly receiving stolen property. In this particular case the stolen good was a motor vehicle. The Court therefore is obliged to consider this offence as a particularly serious one not only because of the apparent high value of the thing stolen received but also because it falls within the realm of cross-border criminal offences, thus falling within a category of criminal offences that have been steadily increasing over the last few years and for which a prison sentence would be the more appropriate punishment.

On the otherhand, the Court notes also the submissions made by Defence Counsel most of which are founded in fact and therefore ought to be also reflected in the punishment that is to be meted out.

Decide :-

Consequently, this Court, declares the accused guilty of the charges brought against him and after having seen the Articles of the Law quoted by the Attorney General, that is to say Articles 17, 31, 334(a), 267 and 279(b) of the Criminal Code, Chapter 9 of the Laws of Malta condemns him to **eighteen months imprisonment**; however having seen **Article 28A of the Criminal Code** the Court orders that the said sentence shall not take effect unless, during a period of **two years** from the date of this order, the offender commits another offence punishable with imprisonment and thereafter the competent court so orders under Article 28B of the Criminal Code that the original sentence shall take effect.

In terms of Article 28A(4) of the Criminal Code, the Court declares and explains in ordinary language to the accused his liability in terms of Article 28B of the Criminal Code if during the operational period he commits an offence punishable with imprisonment.

The Court is, in addition to the suspended sentence abovementioned, after having seen Article 28G(1)(2) of the Criminal Code is making also a suspended sentence supervision order (hereinafter referred to as "a supervision order") placing the offender under the supervision of a supervising officer for a period of two years.

The Court has explained to the accused in clear and simple language the effects of a supervision order as well as of the conditions that are listed in the decrees annexed to this judgment and that form an integral part thereof; in particular it explained to him the consequences that trigger off should he fail to strictly adhere to the terms and conditions therein contained or should he commit another offence punishable with imprisonment during the operative period of the suspended sentence.

The Court orders that a copy of this judgment and the relative supervision order be delivered to the Director of Probation and Parole in order for an Officer to be appointed for the supervision of the accused. This Officer shall be obliged to submit a written report every six months detailing the progress registered by the accused.

Furthermore after having seen Article 28G(1A) of the Criminal Code, and Articles 2, 7, 11 to 14 u 24 of Chapter 446 of the Laws of Malta the Court orders that together with the supervision order, the accused is also being condemned to a community service order such that he will be obliged to perform community work as directed to him by the Director

of Probation and Parole for a period of one hundred hours and this in line with the decree that is being attached and forming an integral part of this judgment.

In terms of Article 11(4) of Chapter 446 of the Laws of Malta, the Court is declaring also that before issuing this order, it explained in clear and simple language to the accused the effects of a community service order as well as the conditions attached to the relative decree.

In terms of Article 11(5) of Chapter 446 of the Laws of Malta, the Court orders that a copy of this judgment and of the community service order decree be transmitted to the Director of Probation and Parole, and all the other persons responsible with the implementation of these orders.

Given that no experts have been appointed in this case, the Court is abstaining from the request of the Prosecution to condemn the accused for the payment of the relative expenses. Finally the Court orders the release of the vehicle in question in favour of its rightful owners.

Delivered today the 25th January 2016 at the Courts of Justice in Valletta, Malta.

Aaron M. Bugeja



COURT OF MAGISTRATES (MALTA)
As a Court of Criminal Judicature

COMMUNITY SERVICE ORDER
(SECTION 11 OF CHAPTER 446 OF THE LAWS OF MALTA)

Magistrate: *Dr. Aaron M. Bugeja M.A. Law, LL.D. (melit)*

Today: 25. i. 2016

THE POLICE

(Inspector Sergio Pisani)

vs

Andrea Benini

The Court,

As per judgement delivered today, in the above names, after having deemed it justified to issue the said Community Service Order, was found guilty and he was subjected to a community service order in terms of Article 11 of Chapter 446 of the Laws of Malta.

After having clearly explained to the accused the consequences and implications of the Community Service Order (including the additional conditions as here below specified in terms of Article 11 of Chapter 446 of the Laws of Malta) and if he fails to follow the Community Service Order or commits another offence he will be liable to be sentenced for the original sentence.

After having seen that the accused confirmed that he is willing to observe the requisites of the same Order;

The Court orders that the accused Andrea BENINI residing at Flat 1, 107, Main Street, St. Julians holder of Italian Passport bearing number YA6542966 be placed under a Community Service Order for a period of one hundred hours of community work/service which has been assigned by the Director of Probation Services which work /service must be carried out under the surveillance of a Community Service Official and subject to the following conditions:

1. That during the Community Service period, the accused obeys all the instructions given to him by the Community Service Officer and maintain regular contact requested by the Community Service Officer depending on the necessity of the case and situation.

2. That the work/service must be carried out during the specified time and period as described here above.

3. That the Community Service Officer must file a written report every six month/s whereby a report is submitted to the Court in relation to the progress and behaviour of the accused.

4. That he must immediately inform the Community Service Officer of any change in his residential address or any temporary or permanent change in his employment.

5. That he must keep contact with the Community Service Officer and follow any orders give by the latter, including the possibility to receive visits from the same Community Service Officer if necessary.

6. That the accused signs and agrees to the above conditions as stated in this Community Service agreement.

ORDERS that a copy of this Community Service Order be handed over to the accused and another copy be notified to the Probation Services Director and this in terms of Section 11(5) of Chapter 446 of the Laws of Malta.

If the person found guilty fails to adhere to the conditions mentioned here above, the Community Service Official shall report this to the Competent Court.

(Signature of person subject to the Community Service Order)

Doris Serpina

Dr. Aaron M. Bugeja M.A. Law, LL.D. (melit)



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

SUPERVISION ORDER

(ARTICLE 28 G OF THE CRIMINAL CODE)

Magistrate: *Dr. Aaron M. Bugeja M.A. Law, LL.D. (melit)*

Today: 25. i. 2016

POLICE

(Inspector Sergio Pisani)

vs

Andrea BENINI

The Court,

As per judgment delivered today in the above names, Andrea BENINI was found guilty and subject to a Supervision Order in terms of Article 28G of the Criminal Code (Chapter 9).

After having deemed it justified to issue the said Supervision Order.

After having clearly explained to the accused the effect of this Supervision Order (including the additional conditions specified hereunder as laid down in sub-article (3) of Article 7 of Chapter 446 of the Laws of Malta) and confirmed that the same was willing to observe the requisites of the same Order;

The Court orders that Andrea BENINI born on the 10th October 1971, son of Mario and Enna nee' Marini, residing at Flat 1, 107, Main Street, St. Julians and holder of Italian Passport number YA6542966 is subject to a supervision order for a period of two years from today under the surveillance of a Supervising Officer under these conditions:

1. That during this period, the accused, behaves, observes all the instructions given by the supervising officer.
2. That the accused remains in contact with the supervising officer according to those instructions which from time to time are given by the

here above mentioned officer, and that he immediately informs the supervising officer with any changes in his address.

3. That he receives visits at his residence and at his place of work as instructed, by the same Supervising Officer.

4. The Supervising Officer is to submit a report in writing to this Court not less than once every six months about his behaviour.

ORDERS that a copy of this Order be given to the accused and to the supervising officer.

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(Signature of the subject a supervision order)

Doris Serpina, Deputy Registrar.

Aaron M. Bugeja, Magistrate.