Court of Criminal Appeal

Hon. Mrs. Justice Dr. Edwina Grima LL.D.

Appeal Nr: 179/2016

The Police

[Inspector Justine Grech]

Vs

Campbell Omar Taalib

Today the, 13th July, 2016,

The Court,

Having seen the charges brought against Campbell Omar Taalib holder of British Passport number 5014250146 before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

1. supplied or distributed or offered to supply or distribute dangerous drugs, being a drug restricted and controlled under the provisions of the Kindred and medical profession ordinance to person/s, who are not authorised person/s or for the use of hte other person/s. without being fully authorised in breach of the Medical and Kindred Profession Ordinance Chapter 31 of the Laws of Malta and the Drugs (control) Regulations, Legal Notice 22 of 1985 as amended;
2. had in his possession the psychotropic and restricted drug without a special authorisation in writing by the superintendent of Public Health,

in breach of the provisions of the Medical and Kindred Profession Ordinance Chapter 31 of the Laws of Malta and the Drugs (control) Regulations, Legal Notice 22 of 1985 as amended, which drug was found under circumstances denoting that it was for his personal use;

3. committed these offences in or within 100m of the perimeter of a school, youth club or centre, or such other place where young people habitually meet, in breach of Article 22 (2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
4. had in his possession the psychotropic and restricted drug (Mephedrone) without a special authorisation in writing by the superintendent of Public Health, in breach of the provisions of the Medical and Kindred Profession Ordinance Chapter 31 of the Laws of Malta and the Drugs (control) Regulations, Legal Notice 22 of 1985 as amended;

The Court is also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed Experts.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 2nd April, 2016 whereby the Court heard the accused plead guilty to the charges brought against him on which plea he insisted even after the Court gave him time to reconsider.

Having seen Article 22 (2) of Chapter 101 of the Laws of Malta and Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended.

Decides :

Condemns the accused for a two and a half years imprisonment and a € 1,500 fine payable within a month.

Having seen the appeal application presented by the Mariela Sotirova Kokonova in the registry of this Court on the 22nd March, 2016 whereby this Court was requested to vary the appealed judgement as regards the punishment inflicted and instead applies a lesser and more appropriate punishment.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal are clear and manifest and consist of the following:

**That the grievance is manifestly clear and consists in the following:**

1. That the **grievance** consists in the fact that the punishment meted out was disproportionate to the facts of the case. The Court of Magistrates when inflicting the punishment did not take into consideration the early admission of the applicant for all the charges brought against him (thus saving time and money of the Court) wherein he admitted in the first available sitting and also his full cooperation with the Police officials as can be clearly evidenced by the statement released by the appellant.

Thus, whilst it is not being contested that the punishment inflicted is one within the parameters of the law, however, when one considers the circumstances of the case in question, the punishment is definitely an exaggerated one taking also into consideration that the applicant has a family living abroad.

That the Court before inflicting the punishment should have taken into consideration the fact that:

(i) The first accusation namely that of supplying or distributing, or offering to supply or distribute dangerous drugs, being a drug restricted and controlled under the provisions of the Kindred and Medical Profession Ordinance to person/s, who are not authorised person's or for the use of

other person/s, without being fully authorised in breach of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended only ensued from the statement that the applicant gave to the Police and thus through his cooperation with the Police;

(ii) the guilty plea of the applicant at the very initial stages of the proceedings, namely in the first appointed sitting for the hearing of the case;

(iii) his full co-operation with the investigative officials of the police which is clearly evidenced in his statement, wherein he admitted to the possession and trafficking of ecstasy drugs;

(iv) the clean criminal record of the applicant and as a result he should be considered as a first time offender;

(v) he only sold drugs for a day or two whilst in Malta and the relatively small amount of money he profited from such trafficking of drugs;

(vi) the amount of ecstasy pills that were found in his vehicle were not only for the appellant himself but they were going to be shared by the appellant and his friends.

Furthermore, the punishment meted out by the Court of Magistrates is disproportionate even when one considers the amount of ecstasy pills involved. Although the amount involved is not a small amount and the trafficking of drugs has been considered by our Courts a crime of a serious nature, even when comparing the drugs involved and the punishment meted out in this case with other cases, one notices that the punishment meted out in this case is disproportionate even taking into account all the relevant circumstances of the case. For instance:

a) In The Police vs Geoffrey Galea (dated 26/10/2015) the accused had 23 and a half ecstasy pills and he was given six (6) months imprisonment and a fine of eight hundred euro (€800);
b) In The Police vs Carmil William Camilleri (dated 06/02/2016) the accused had 15 ecstasy pills and a cannabis rasa (0.862 grams) and he was given seven (7) months imprisonment and a fine of eight hundred euro (€800);
c) In The Police vs James Tabone (dated 26/04/2014) the accused had 252 ecstasy pills and a cannabis rasa (1.22 grams) and he was given eighteen (18) months imprisonment and a fine of five thousand euro (€5000);
    a. In The Police vs Geoffrey Turner (dated 13/11/2014) the accused had 110 mdma pills, 281 mCPP pills, cocaine (6.03 grams) and cannabis leaves (0.89 grams) and he was given twelve (12) months imprisonment and a fine of two thousand euro (€2000);

Moreover, various times the Court has accentuated the importance of punishment in having a rehabilitative effect rather than having a deterrent effect. In fact, in the judgment delivered by the Criminal Court of Appeal dated 22nd of September, 2013, in the names **Il-Pulizija vs. Stephen Spiteri**, the Court held that:

> *"Konsiderata l-piena bhala mezz ta' riforma tal-imputat fl-interess tieghu u tas-socjeta', izjed u izjed din il-piena karceraja tidher inadatta. Infatti, permezz taghha, tifel ta' kondotta sa issa tajba, u li diga', bil-fatti, wera' soghba tarreat li ghamel, ser jinxtehet ghal soggorn ma' nies li filmaggjoranza taghhom huma delinkwenti recidivi multipli. B'hekk minflok jigi riformat, hemm il-possibilta' illi huwa jiehu lezzjonijiet fid-delinkwenza ... tara illi huwa opportun illi inehhi l-impressjoni illi l- iskop tal-ligi kriminali u talpiena huwa biss illi jkun ta' deterrent biex jghallem lil dak li jkun illi 'crime does not pay'. Huwa certament kuncett illi ghamel zmien u kien il-kuncett predominanti, pero llum ilkuncett m'huwiex aktar ta' piena retributtiva, imma ta' sistema restorattiva, fejn anke jekk hu possibbli u safejn hu possibbli, u tenut kont anki tac-cirkostanzi kollha tal-kaz, kif ukoll tal-precedenti kriminali tal-imputat, isir tentattiv biex mhux biss issir rikonciljazzjoni bejn l-agent tad-delitt u l-vittma li tkun sofriet danni u anke sofferenzi ohrajn, imma anki illi jkun hemm possibilita' illi dak li jkun jigi nformat u jikkonvinci ruhu illi ghandu jsegwi t-triq ittajba"*

Reference is also made to various judgments where even accused who were recidivists were given another window of opportunity since an effective term of imprisonment was seen as too harsh as a punishment. In fact, in the case of ***Il-Pulizija vs Charlot Aquilina***, decided by the Court of Magistrates (Malta) on the seventh (7) of November, 2008, the Court stressed the importance of giving the accused another chance and in fact the Court imposed a Probation Order notwithstanding that the accused was recidivist:

> *Ghal finijiet ta' piena il-Qorti kkunsidrat bir-reqqa kollha dovuta is-Social Inquiry Report esebit a fol. 104 et sequitur tal-process minn fejn jirrizulta li l-imputat kellu trobbija instabbli,* ***li huwa kellu problema serja ta' abbuz mid-droga... u li huwa ilu ma jabbuza mid-droga b'mod kontinwu ghal dawn l-ahhar erba' snin*** *...* ***li tul dawn l-ahhar erba' snin kienu qed isiru urine sample tests lill-imputat u dawn dejjem irrizultaw fin-negattiv*** *... Il-Qorti wara li kkunsidrat dan kollu jidrilha li ghalkemm mill-fedina penali tal-imputat jirrizulta li huwa inghata opportunitajiet rega' qabad it-triq il-hazina ghaliex kien ghadu jabbuza mid-droga, irrizulta wkoll li dawn l-incidenti jirrisalu ghal qabel is-sena 2003, u cioe' ghal qabel ma l-imputat beda u ttermina b'success il-programm residenzjali,* ***u ghalhekk l-imputat ghandu jinghata l-ahhar opportunita' sabiex jirriforma ruhu u jaqbad definittivament it-triq it-tajba specjalment meta wiehed jikkunsidra li llum il-gurnata l-***

***imputat*** *oltre li ttermina b'success il-programm residenzjali* ***ghandu xoghol stabbli u anki hajja familjari wkoll pjuttost stabbli.***

In the case of ***Il-Pulizija vs Ritmar Hatherly u Justin Farrugia***, decided by the Criminal Court of Appeal on the ninth (9) of October, 2008, the Court whilst making reference to other judgments held that:

*"Issa, ghalkemm huwa veru li qorti ghandha dejjem toqghod attenta li ma tizvalutax il-mizuri mhux karcerarji a disposizzjoni taghha b'applikazzjoni taghhom bl-addocc u minghajr ma tiehu kont xieraq tal-antecedenti penali ta' dak li jkun, mill-banda l-ohra s-semplici fatt li persuna tkun precedentement inghatat probation jew conditional discharge ma jfissirx necessarjament li ma tkunx tista', jew li m'ghandhiex, fil-kazijiet li jikkwalifikaw terga' tinghata probation jew conditional discharge jew tigi applikata fil-konfront taghha xi mizura ohra taht il-Kap. 446. F'dan ir-rigward din il-Qorti taghmel referenza ghal dak li nghad fis-sentenza taghha tat-18 ta' Jannar 2001 fl-ismijiet Il-Pulizija v. George Farrugia: "Issa, huwa veru li l-appellat ghandu fedina penali li ftit din il-Qorti rat bhalha. Bizzejjed jinghad li dina l-fedina penali tiehu xejn anqas minn 42 faccata. L-appellat illum ghandu erbghin sena, u f'dawn l-erbghin sena huwa kellu xejn anqas minn 77 kundanna mill-Qrati ta' Gustizzja Kriminali. Kien hemm xi okkazzjonijiet fis-snin sebghin u fil-bidu tassnin disghin meta l-qrati applikaw fil-konfront tieghu sia l- Artikolu 5 kif ukoll l-Artikolu 9 tal-Kap. 152; il-bqija talkundanni, pero`, jinvolvu multi u habs…"Apparti li din il-Qorti ma tistax taqbel ma' l-Avukat Generali fejn dan jghid li s-sitwazzjoni ta' l-appellat hija "irriversibbli" – fil-fehma tal-Qorti hija l-mewt biss li ggib stat jew sitwazzjoni ta' irriversibilita` assoluta – anqas ma tista' din il-Qorti tikkondividi l-fehma ta' l-Avukat Generali li Ordni ta' Probation hu indikat biss ghal "first offenders" zghazagh.* ***Anke fil-kaz ta' persuna ta' eta` mhux zghira u li forsi hu recidiv, tista' titfacca fil-hajja ta' dik il-persuna a window of opportunity li permezz taghha jkun jista' jinkiser ic-ciklu ta' kundanni u ta' prigunerija.***

Considers,

The grievance put forward by appellant to the judgment delivered by the First Court, is limited to the punishment inflicted upon him for the charges brought against him of drug trafficking in violation of the provisions of Chapter 31 of the Laws of Malta, and this consequent to his admission of guilt registered upon his arraignment.

Now it has been constantly affirmed by local and foreign jurisprudence that a court of second instance will very rarely vary the punishment meted out in the appealed

judgment and this where such punishment falls within the parameters defined by law. The reasoning behind this legal maxim is that whoever admits to the charges proffered against him is assuming full responsibility for his decision and therefore is submitting himself to any decision which will be taken by the Court in considering a just and fair punishment to his case. Therefore the function of this court of second instance is to examine the circumstances leading to the decision being subject to appeal and this to examine whether such punishment was excessive in the circumstances.

In fact appellant laments that there is a disparity between the punishment inflicted on him by the First Court and the punishment given in other similar cases where the amount of pills involved was greater and the term of imprisonment inflicted was shorter that the one he recieved. He states that the he fully co-operated with the police admitting to them that he had trafficked ecstasy pills during his short stay on the islands and that he in fact admitted to the charges brought against him upon arraignment. The amount of ecstasy pills found in his possession amounted to 75 pills. In *Blackstone's Criminal Practice*, 2001 (para. D22.47 a fol. 1650) it is stated with regard to joint offenders charged with similar offences:

"*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 judgment 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 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 Cr 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' (Dickinson [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, in his *Criminal Pleading, Evidence and Practice*, 2001 (para. 5-174, p. 571) similarily comments:

*"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 gone wrong with the administration of justice?' (per Lawton L.J. 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.).."*
That although in this case there is no accomplice to the crime, however appellant feels aggrieved by a disparity in the punishmenmt handed down in similar cases where the Courts were more lenient than in his case. The Court has examined the case-law cited by appellant and considers that the circumstances therein considered where in all instances somewhat different, the Courts taking into consideration various other factors like the length of the proceedings and the reformed life of the offender who was nearly in all cases a victim himself of drug-abuse. What this Court has to examine however, is whether the punishment handed down was manifestly excessive in the circumstances rather than more severe than other judgments since it is not acceptable that this Court reduces a term of imprisonment such as to create a situation where there are *"two, rather than one, over-lenient penalties"*.

This Court has examined all the circumstances revolving around this case. Accused, a person of British nationality, was caught red handed in the possession of 75 ecstasy pills. He fully cooperated with the police and admitted to having trafficked the said pills, having acquired upon his arrival in Malta a few days earlier around 100 pills from a certain "Scott".

Now article 120A(2)(b) of Chapter 31 of the Laws of Malta contemplates a term of imprisonment of not less than six months but not exceeding ten years and to a fine (multa) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) but not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87), the punishment in this case being increased by one degree, appellant having admitted to committing the crime in, or within one hundred metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet.

Consequently this Court is of the opinion that the punishment tendered by the First Court was well within the parameters of the law and also verging very close to the

minimum taking into consideration the amount of pills admitted to have been acquired for trafficking purposes and also the aggravation admitted by appellant increasing the punishment by one degree. The Court considers that the offence committed by appellant was a serious one wherein he intentionally acquired the drugs to sell to youths and young persons thus putting their lives at risk and this for personal gain.

Therefore for the above-mentioned reasons the appeal is being rejected and the judgment of the First Court confirmed in its entirety.

(ft) Edwina Grima
Imhallef
VERA KOPJA

Franklin Calleja
Deputat Registratur