

COURT OF CRIMINAL APPEAL

Judge:

The Hon. Mr Justice Vincent A. De Gaetano

Sitting number: XXII
Monday, 26 February, 2001

Appeal no. 37/2001

The Police
(Inspector Alexandra Farrugia Mamo)
(Inspector and Immigration Officer Neville Xuereb)

v.

Marco John Ellul, and
Terri Lynn Campbell

The Court:

Having seen the judgement of the court of first instance of the 9 February, 2001;

Having seen the appeal filed by the Attorney General on the 22 February, 2001;

Having seen the records of the case and heard submissions, in this morning's sitting, by Assistant Attorney General Dr Anthony Barbara and by counsel for the two respondents, Dr Angelo Farrugia;

Considers:

This is an appeal filed by the Attorney General in terms of section 413(1)(b)(iii) of the Criminal Code. The provision in question provides that the Attorney General shall have a right of appeal when "the punishment awarded by the inferior court is, by reason of its quality or quantity, different from that prescribed by law for the offence for which the party convicted has been sentenced".

Respondents were originally charged before the Magistrates' Court with the continuous offence of obtaining money or property by false pretences (*truffa*) to the detriment of several persons, as well as with the offence contemplated in section 5(2)(a) of the Immigration Act (Cap. 217), to wit the offence of being unable to show that they had the means of supporting themselves or that it was likely that they would become a charge on the public funds, notwithstanding they they were in Malta with leave of the Principal Immigration Officer. In the charge sheet, the prosecution had requested that a removal order be issued in respect of the said Ellul and Campbell. Both Ellul

and Campbell pleaded guilty to these charges before the Inferior Court (see fol. 18 and 19 of the record of the proceedings).

After hearing some evidence, notably some of the injured parties, the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered judgement on the 9 February, 2001. It declared Marco John Ellul and Terri Lynn Campbell guilty as charged, sentenced them each to two years imprisonment suspended for four years and entered a direction for compensation or restitution in terms of section 28H of the Criminal Code. That court did not order the removal of the said Ellul and Campbell in terms of section 15(1) of the Immigration Act.

The Attorney General is, of course, right in complaining that the first court had not awarded the appropriate punishment under the Immigration Act. A person who is a prohibited immigrant under section 5(2)(a) of the Immigration Act is to be removed as provided in section 15 of that Act. Consequently, in not making or issuing the removal order, the first court did not apply the appropriate punishment according to law.

This Court, however, can understand to a certain extent why the Inferior Court failed to issue a removal order: had it done so, it could well have happened that the Immigration Authorities would have removed Ellul and Campbell from Malta before these two had had the opportunity to pay the victims as required by the order under section 28H. The first court, unfortunately, allowed respondents a very long period of time – the maximum allowed by law, that is six months – within which to effect the necessary restitution or compensation. The appropriate course of action in such a case would have been to set down a very short period of time within which the compensation or restitution was to be made (say, six or ten days) and order that the removal order was not to have effect except after the lapse of that period of time or such longer period as that court would have deemed necessary in order to allow the injured party or parties to file the sworn application/s mentioned in subsection (4) of section 28H.

In any case, it would now appear from the documents exhibited before this Court by respondents that they have complied with the restitution or compensation directive included in the judgement of the first court. Consequently there appears to be no reason why the removal order should not be made according to law as requested by the prosecution.

For these reasons the Court allows the appeal by the Attorney General and varies the judgement of the first court by adding thereto a removal order, in the sense that this Court is ordering the removal of respondents Marco John Ellul and Terri Lynn Campbell from these Islands in terms of section 15(1) of the Immigration Act; and otherwise confirms the judgement of the first court. The Court orders that the passports of respondents, which were exhibited in the record of the proceedings before the Inferior Court, be handed by the Registrar to the Principal Immigration Officer or his representative.

(sgd) Paul Miruzzi
Deputat Registratur