MALTA

COURT OF CRIMINAL APPEAL

THE HON. CHIEF JUSTICE
VINCENT DE GAETANO

HON. MR. JUSTICE
JOSEPH A. FILLETTI

HON. MR. JUSTICE
DAVID SCICLUNA

Sitting of the 25 th August, 2005

Number 3/2004

The Republic of Malta

v.

Gregory Robert Eyre
-- omissis --

The Court:

This is an appeal filed by Gregory Robert Eyre on the 20 October 2004 from a judgement of the Criminal Court of

the 4 October 2004. The relevant part of the judgement reads as follows:

"Having seen the application filed by the Attorney General on the 31st. August, 2004, wherein he requested that the accused be subjected to a separate trial from the other co-accused in terms of section 594 of the Criminal Code;

"Having seen this Court's decree of the 2nd September, 2004, whereby it upheld said request and ordered that a separate trial be held for each of the two co-accused;

"Having seen the joint application filed by the Attorney General and the accused of today's date whereby in terms of Section 453A(1)(2) of the Criminal Code they submitted that, in the eventuality of the accused pleading guilty to the counts of the bill of indictment, the punishment which should be imposed upon him should be that of imprisonment for a period of fifteen (15) years and a fine (multa) of twenty five thousand Maltese Liri (LM25,000) apart from other sanctions and consequences which are mandatory upon conviction in terms of the provisions of Chapters 31 and 101 of the Laws of Malta, and whereby they requested that this Court should sentence the accused to said punishment;

"Having seen that in today's sitting, the accused, in reply to the question as to whether he was guilty or not guilty of the charges preferred against him under the five counts of the Bill of Indictment, stated that he was pleading guilty thereto;

"Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed him a short time to retract it, according to Section 453 (Chap. 9);

"Having seen that the accused, being granted such a time, persisted in his statement of admission of guilt;

"Declares the accused, namely Gregory Robert Eyre guilty of all five counts in the Bill of Indictment, namely of:

1. Having, during the period of a number of weeks prior to the 11th August, 2003, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), and the Medical and Kindred Professions Ordinance (Chapter 31), and specifically of importing and dealing in any manner in cocaine and Ecstasy Pills, and of having promoted, constituted, organized and financed such conspiracy, as stated in the first count of the Bill of Indictment;

2. On the 11th. August, 2003 , at Malta International Airport, meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when he was not in possession of any valid and subsisting import authorization granted in pursuance of said law, as stated in the second count of the Bill of Indictment;

3. On the 11th. August, 2003 , at Malta International Airport ,meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (Ecstasy), being a drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance, when he was not in possession of any valid and subsisting import authorization granted in pursuance of said law, as stated in the third count of the Bill of Indictment;

4. On the 11th. August, 2003, at Malta International Airport knowingly having been in possession of a dangerous drug (cocaine) specified and controlled under the provisions of Part I, First Schedule, of the

Dangerous Drugs Ordinance, when not in possession of any valid and subsisting import or possession authorization granted in pursuance of said law; so however, that such offence was under such circumstances that such possession was not for the exclusive use of the offender, as stated in the fourth count of the Bill of Indictment;

5. On the 11th. August, 2004, at Malta International Airport, knowingly, having been in possession of a dangerous drug (Ecstasy Pills) being a drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance, when he was not in possession of any valid and subsisting import authorization granted in pursuance of said law; so, however, that such offence was under such circumstances that indicate that such possession was not for the exclusive use of the offender, as stated in the fifth count of the Bill of Indictment;

"Having seen the minute entered by the Prosecution whereby it declared that the accused should benefit from any reduction in punishment as contemplated in section 120A(2B) of Chapter 31 and Section 29 of Chapter 101 of the Laws of Malta;

"Having heard submissions of Defence Counsel regarding the plea in mitigation of punishment;

"Having considered ALL submissions made by defence counsel which are duly recorded and in particular – but not only – the following, namely that Gregory Robert Eyre was aware of the mistake he had committed and acknowledged his guilt from the outset and also helped the Police by identifying the person who had given him the drugs he had to import to Malta and that this information had actually led to extradition proceedings being taken against the person in question, and that he had indicated that he was considering pleading guilty to the Bill of Indictment at an early stage;

"Having heard the evidence under oath of Gregory Robert Eyre where he gave the name of the person who had given him the drugs in question giving details of his particulars and wherein he also declared that he was also prepared to give evidence against said person in any Court of Law, if necessary;

"Having considered that prosecuting counsel declared that he had nothing further to add to the contents of the joint application;

"Having seen that the first and second counts of the Bill of Indictment are, for purposes of punishment, to be considered as having served as a means for the commission of the offences under the fourth count of the Bill of Indictment, and that the first and third counts of the Bill of Indictment are, for purposes of punishment, to be considered as having served as a means for the commission of the offences under the fifth count of the Bill of Indictment, for the purpose of and according to Section 17 (h) of Chapter 9 of the Laws of Malta (vide "Ir-Repubblika ta' Malta vs. Mansour Muftah Nagem" [30.10.2002] ; "Ir-Repubblika ta' Malta vs. Ahmed Esawi Mohamed Fakri" and others);

"Having considered that the punishment laid down by law for the offences of which accused has been declared guilty is imprisonment for life together with a fine multa of not less than LM1000 and not more than LM50000.

"Having also considered however that according to section 492 (1) of the Criminal Code, whenever, at any stage prior to the empanelling of the jury, the accused pleads guilty to an offence attracting the punishment of life imprisonment, the Court may, instead of said punishment, award a sentence of imprisonment for a period ranging between eighteen and thirty years.

"Having also considered that according to section 22(2)(a)(i)(aa) of Chap.101 and Section 120A (2)(a)(i)(aa) Chap. 31 of the Laws of Malta, when the Court is of the opinion that, having regard to the offender's age, his previous conduct, the quantity of the medicine and the quality of the equipment or material involved and all the other circumstances of the offence, life imprisonment is not warranted, the Court may sentence the person so convicted to a term of imprisonment of not less than four years and not more than thirty years together with the fine above mentioned.

"Having considered both local and foreign case law regarding the plea in mitigation of punishment when the accused person files an early plea of guilt and in particular "Ir-Repubblika ta' Malta vs. Nicholas Azzopardi" [24.2.1997] (Criminal Court); "Ir-Repubblika ta' Malta vs. Mario Camilleri" [5.7.2002] (Court of Criminal Appeal); "Il-Pulizija vs. Emmanuel Testa" [17.7.2002] (Court of Criminal Appeal) and others) as well as BLACKSTONE'S CRIMINAL PRACTICE (Blackstone Press Limited 2001 edit) ;

"On the other hand having considered that, as stated in BLACKSTONE'S,
"Where an offender has been caught red handed and a guilty plea is inevitable, any discount may be reduced or lost (Morris [1998] 10 Cr. App. R. (S) 216; Landy [1995] 16 Cr. App. R. (S) 908)";

"Having also considered that the person convicted is to benefit from the provisions of Section 120A (2B) of Chapter 31 and Section 29 of Chapter 101 of the Laws of Malta as evidenced by the minute entered into the records of the case in the course of today's sitting by the Prosecution;

"Having on the other hand considered the considerable quantity amounting to 7151 tablets containing the substance 3,4 Methylenedioxymethamphetamine (MDMA) and the

quantity (2,988.2 grams), and the purity (70%) of the dangerous drug cocaine also imported into Malta by the convicted person;

"Having considered the havoc that the importation and distribution of such a considerable amount of drugs would have caused on the local market had it not been intercepted by Customs and the Police and that the convicted person abused of the hospitality extended to him by Maltese society as a visitor to this Island by using such visits to further his criminal ends and to make a considerable profit thereby ;

"Having seen other cases decided by this Court where the facts of the case were somewhat similar - though obviously never identical - for the purpose of maintaining a desirable degree of uniformity in punishment;

"Having seen Sections 2(1), 4, 9, 10,10(1) 12, 14, 14 (1)(5), 15A, 20, 22 (1)(a)(f)(1A)(1B), (2) (a)(i)(aa),(f) (i) (3A)(c)(d), 22A, 22B, 22E, 22(f), 26 (1)(2), 27, 28, 29 and 30 of the Dangerous Drugs Ordinance (Chap.101); Sections 120A (2)(a)(i)(aa)(l), (2A)(2B), 121A (1)(2), and 120A (1)(f)(2)(a)(l) of the Medical and Kindred Professions Ordinance, (Chapter 31), Sections 17(a)(b)(h), 20, 22, 23, 453A(1)(2), 492 (1) and 533 of the Criminal Code, as well as sections 5(2)(b) and 15 of the Immigration Act, and Regulation 8 of the 1939 Regulations for the Internal Control of Dangerous Drugs (Legal Notice 292/39), and Legal Notices 22/85 (regulation 10 (2)), 70/88 and 183/99;

"Whereas the Court is satisfied that the sanction and punishment agreed to by the Prosecution and the Defence can be legitimately imposed upon the conviction of Gregory Robert Eyre of the crimes to which he has pleaded guilty, agrees with the imposition of such sanction and punishment and upholds such request, according to Section 453A(1)(2) of the Criminal Code;

"Condemns said Gregory Robert Eyre to a term of imprisonment of fifteen (15) years and to a fine multa of twenty five thousand Maltese Liri (LM25,000) which fine shall be automatically converted into a further term of imprisonment of eighteen (18) months according to law if it is not paid within fifteen days from today and further orders that he should pay the sum of nine hundred and fifteen Maltese Liri and forty two cents (LM915.42c) being the court expenses incurred in this case according to Section 533 of Chapter 9 of the Laws of Malta within fifteen (15) days from today;

"Furthermore orders that all objects related to the offences and all monies and other moveable and immovable property pertaining to the person convicted should be confiscated in favour of the Government of Malta;

"Furthermore the Court is issuing a Removal Order against the person convicted and orders that he is to be deported from these Islands in terms of Sections 5 (2) (b) and 15 of the Immigration Act, as soon as he has served his term of imprisonment and paid the said fine or else served the further term of imprisonment, should such fine be converted into a further term of imprisonment as aforesaid.

"Finally the Court orders the destruction of all drugs under the direct supervision of the Deputy Registrar of this Court duly assisted by Court Expert Mario Mifsud, only after the case against the other co-accused is finally determined , unless the Attorney General informs this Court within fifteen days from today that said drugs are also to be preserved for the purposes of other criminal proceedings against other third parties and, for this purpose, the Deputy Registrar should enter a minute in the records of this case reporting to this Court the destruction of said drugs."

Appellant has three grounds of appeal. The first ground is to the effect that the first Court, erroneously believing that Section 22 of the Criminal Code, as substituted by Section 8 of Act III of 2002, was applicable to the instant case failed to order that the period spent by Eyre in preventive custody be deducted from the fifteen years. This ground of appeal is not only well founded, but counsel for the prosecution, Dr Mark Said, during the sitting of the 14 July 2005 agreed that the deduction of the period of preventive custody was in conformity with the original agreement of the parties submitted in terms of Section 453A(1)(2) of the Criminal Code. This Court observes that, apart from the joint note of the parties submitted on the 4 October 2004 in accordance with the said Section 453A (which note does not refer in any way to preventive custody or its deduction), the practice of all Courts of Criminal Justice has consistently been that, save for exceptional reasons, the period of preventive custody is always deducted from the term of imprisonment. However, because of the combined effect of Section 168 (a transitory provision) of Act III of 2002 and of Legal Notice 273 of 2003 (whereby the new Section 22 came into effect only on the 1 October 2003), in the instant case this deduction is not automatic (i.e. the new Section 22 – or Section 22 as substituted – does not apply). Consequently the deduction of the period of preventive custody has to be expressly ordered by the Court in accordance with Section 22 as it was prior to its substitution. The first Court, clearly through an oversight, failed so to order.

The second ground of appeal is to the effect that the removal order sanctioned by the first Court is no longer applicable in his case since, as a British subject and therefore a European Union citizen, such a removal order is illegal in his regard. By a note filed yesterday, 24 August 2005, the Attorney General agreed that in the instant case the removal order should be revoked by this Court.

Finally – and this is his third ground of appeal – appellant states that he should not have been ordered to pay all the court experts' expenses and fees. According to appellant,

since there were originally two co-accused – himself and Susan Jane Molyneaux – he should be mulct in only half these costs. This Court agrees with appellant on this score. What is not clear, however, from the sentence of the first Court or from the records is whether the sum of Lm915.42c mentioned in the said sentence represents the entire court expenses or only half of those expenses incurred in connection with the case.

For these reasons, the Court allows the appeal and therefore:

(1) revokes that part of the judgement which states "the Court is issuing a Removal Order against the person convicted and orders that he is to be deported from these Islands in terms of Sections 5(2)(b) and 15 of the Immigration Act, as soon as he has served his term of imprisonment and paid the said fine or else served the further term of imprisonment, should such fine be converted into a further term of imprisonment as aforesaid", and this entirely without prejudice to any administrative measure regarding removal from Malta which may eventually be taken against appellant according to law after he has served his term of imprisonment and paid the fine or served the term of imprisonment into which the fine may be converted;

(2) revokes that part of the judgement which states "…and further orders that he should pay the sum of nine hundred and fifteen Maltese liri and forty two cents (Lm915.42c) being the court expenses incurred in this case according to section 533 of Chapter 9 of the Laws of Malta within fifteen days from to-day" and instead orders appellant to pay half the court expenses incurred in this case according to Section 533 of the Criminal Code within fifteen days from the date on which he is served with a letter from the Registrar indicating the amount to be paid; and

(3) confirms the rest of the judgement, so however that from the period of imprisonment of fifteen years there is to be deducted any period spent by appellant in preventive custody prior to the sentence of the 4 October 2004.

< Final Judgement >

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