



MALTA

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

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 2 nd June, 2006

Number. 409/2006

POLICE
INSPECTOR LOUISE CALLEJA
INSPECTOR JOSRIC MIFSUD
VS
HUGH GLASS

The Court,

Having seen the charges brought against the accused Hugh Glass, 46 years, son of late John and Margaret nee' Johnston, born Ballymena, North Ireland, UK, on the 24th August 1956, and residing at omissis, and holder of British Passport No. 034216221, and charge him with having, in April 2006, at omissis, or/and in any other localities on these Islands, by several acts committed by him, even at different times, which constitute violations of the same provision of the law, committed in pursuance of the same design, by lewd acts defiled minor omissis, omissis years of age, which offence was committed on a person who

Informal Copy of Judgement

had not completed the age of twelve years, and was committed by deceit.

Having heard the evidence tendered on oath;

Having seen the record of the proceedings;

Having heard the plea of guilt entered by the accused;

Having heard the confirmation of the plea of guilt entered by the accused Hugh Glass on 19th May 2006, after the Court accorded a reasonable time for the accused to reconsider his plea;

Having heard the oral submissions of the parties;

Considers:-

In the oral submissions, the Court was informed that whilst the accused was on house arrest due to similar charges being brought against him, and was at his residence having a shower, the omissis year old minor omissis walked into the accused's flat. This was possible because the front door of the flat was open, as was the bathroom door.

During submissions, the Court heard that when the minor surprised the accused in the bathroom during his shower, the accused did not make an attempt to hide his nakedness but instead started to masturbate in the presence of the minor.

Indeed, in the judgment *The Police vs Thomas Wiffen*, decided by the Court of Criminal Appeal on the 8th January 1996:

'For the completed offence and apart from the formal element of the offence, there must be the lewd act (atto di libidine) and the actual defilement. The lewd act may be committed either on the person or in the presence of the minor. All acts which, either by their very nature or of the circumstances in which they are performed, either are

directed to the indulgence of the sexual appetite, either of the agent or of the victim, and are capable of arousing sexual interest of the victim, are lewd acts for the purposes of the offence in question.'

The duration of these acts is immaterial for the notion of a lewd act (ebid at page 150 Volume LXXX 1996 part 4):

*'For the subsistence of the crime, it is not necessary that the defilement shall be immediate. The very young age of the person with whom the lewd acts have been committed does not rule out the crime if the remembrance of such acts is calculated to cause a defilement. **Indeed, according to our Law, if the victim is under twelve years of age, that is, a reason for aggravating the crime.'** (notes on the Criminal Law per Sir Anthony Mamo at page 226).*

The Court notes that the accused pleaded guilty to the charges brought against him and did so in the course of the first hearing of this Court.

Furthermore, the Prosecution exhibited the birth certificate of the minor omissis (vide document C at page 10), who is under twelve (12) years of age.

The Court noted that the accused lived in the UK, The Republic of Ireland, and had emigrated to the USA, but refused to comment on the reason for having left the above mentioned countries.

Considering all the circumstances of the case, there is no doubt, in this Court's mind, that all the essential elements of the crime contemplated under Article 203 of the Criminal Code, that is, the age of the victim, the lewd acts and the actual defilement of the minor in question have indeed concurred.

Therefore in view of his plea of guilt, the Court finds the accused Hugh Glass guilty of the charges brought against him, and after having seen Articles 203(1)(a) of the Criminal Code, condemns the accused to a period of

three (3) years imprisonment. This period of imprisonment is being awarded after the Court took into consideration all the circumstances of the case including his plea of guilt at the initial stage of the proceedings; the fact that the lewd act with which the accused stands charged is grave but not the most heinous in these category of acts.

Furthermore, the Court refuses the request of the Defence for the ban of the publication for the name of the accused, even on the grounds of his own personal security, due to the fact that the circumstances of the case are not such that involve a familial relationship between the abuser and the victim through which the identity of the child may be discovered.

The Court however, for good measure, is recommending that the Director of the Correctional Facilities at Kordin ensures the personal security of the accused, and orders a copy of this judgment to be served on the Director above mentioned.

< Final Judgement >

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