MALTA

COURT OF CRIMINAL APPEAL

THE HON. CHIEF JUSTICE
VINCENT DE GAETANO

Sitting of the 22 nd February, 2008

Criminal Appeal Number. 417/2007

The Police

v.

Ali Azrak Dardamo

The Court:

Having seen the charges preferred by the Executive Police against Ali Azrak Dardamo, son of Dardamo and Khaltuma nee` Hamdu, born in the Sudan on the 2/7/1987 (ID0036026(A)), to wit the charges of having in these Islands on the night between the 16th and 17th August 2007 (**1**) produced, sold or otherwise dealt with in the resin obtained from the plant *Cannabis*, or any preparations of which such resin forms the basis in breach of Article 8(b) of the Dangerous Drugs Ordinance, (**2**) had in his possession the said resin under such circumstances denoting that it was not intended for his exclusive use, (**3**) committed the abovementioned offences in or within 100 metres 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 same said Ordinance, and, finally (**4**) with having breached the conditions imposed by the Court of Magistrates (Malta) in the judgment delivered on the 9.8.2006;

Having seen the judgment of the Court of Magistrates (Malta) of the 16 November 2007 whereby the said Ali Azrak Dardamo was found guilty of the first, the second and the fourth charge, as well as of the aggravation in the third charge, with the second charge absorbed in the first charge, and sentenced the said Ali Azrak Dardamo to two years imprisonment (from which is to be deducted the time spent in preventive custody) and to the payment of a fine *multa* of Lm800 (Euro 1863.49) (which fine may be paid in instalments of Lm 100 [or Euro 232.93] per instalment, with the first instalment to be paid within four weeks, sohowever that if any instalment is not honoured, all the balance becomes due, and if the fine is not paid then it is to be converted into one day imprisonment for every Lm5 not paid, subject to a maximum of five months imprisonment); that court further ordered the confiscation of the Lm45 exhibited in court by the prosecution; ordered the said Dardamo to pay the court experts' fees, amounting to Lm541.03 (Euro 1260.26) within a month from the date of the judgment; finally that court ordered the registrar to destroy the drug exhibited in court and to draw up a *proces-verbal* within fifteen days of the destruction;

Having seen the application of appeal filed by the same said Dardamo, whereby he requested that this court vary the judgment of the Court of Magistrates;

Having examined the record of the case; having heard counsel for appellant and for the respondent Attorney General on the 20 February 2008; considers:

This appeal verges on the frivolous. Appellant has basically two grievances, one of a generic nature and the other slightly more specific. The more specific grievance is that he should not have been found guilty of the

aggravating circumstance mentioned in the third charge. Now, although appellant, when he was arraigned in court on the 18/8/07, originally contested the charges brought against him, he eventually changed his not guilty plea to one of guilty. This, however, he only did on the 5 November 2007, that is almost three months after his arraignment and when a considerable amount of evidence had already been brought forward by the police. The minute of the sitting of the 5th November quite clearly states that the accused is pleading guilty and, in the absence of any reservation specifically noted down in the minute, this can only be interpreted that he was pleading guilty to all the charges, with the attendant aggravation or aggravations (see fol. 70). It is therefore quite irregular and totally unacceptable for appellant to try now to go back on that plea, in whole or in part, by claiming that he should not have been found guilty of the aggravation concerning the distance of 100 meters from the perimeter of a school, youth club etc.

As to the generic grievance, this is made to consist in the fact that the punishment awarded was, in the circumstances, excessive. Appellant puts forward for this Court's consideration the fact that the amount of drugs in question was relatively small (although hardly *de minimis*, as stated in the application of appeal) – 8.48 grams of cannabis resin, without counting the resin sold to Kadir Mirac Taskin; that the drug in question is considered to be a soft drug; and that he "collaborated with the court and registered an admission at the earliest opportunity". This Court, however, is not in the least impressed with these supposedly mitigating factors, especially in the light of the fact that appellant was in breach of a conditional discharge imposed by the Inferior Court, for possession of cannabis resin, on the 9 August 2006 – see fol. 50 and 51. In that previous case he had been discharged on condition that he does not commit another offence within fourteen months from that date (9/8/06). If any criticism can be levelled at the judgment of the first court it is that the punishment awarded was too lenient.

For these reasons, this Court dismisses the appeal and confirms the judgment of the first court in its entirety.

< Final Judgement >

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