



CRIMINAL COURT

**THE HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 4 th February, 2010

Number 34/2009

The Republic of Malta
Vs
Efosa Efionayi

The Court,

Having seen the bill of indictment no. 34/2009 against the accused Efosa Efionayi wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that on the night between the twentieth (20th) and the twenty- first (21st) day of April of the year two thousand and eight (2008) and during the previous days, weeks and months, EFOSA EFIONAYI decided to start dealing, offering, supplying and exporting drugs illegally into the Maltese Islands in agreement with others.

In fact on the dates abovementioned, the accused EFOSA EFIONAYI conspired and agreed with other

persons, namely a certain Ali, another person referred to as “Fat Boy” (who later was identified by the Malta Police as being a certain Augustine Onuchukwu Eluchukwu), a certain Sam and others, to illegally deal in and export from The Netherlands and from Belgium to the Maltese Islands, a quantity of the drug heroin for its eventual trafficking and distribution in the Maltese Islands.

EFOSA EFIONAYI agreed and planned with the said Ali, Sam, “Fat Boy” and others about the nature and weight of the drug to be dealt with (heroin), the route to take (Amsterdam – Brussels – Malta) and/or packing and/or means of concealment (body-packing of capsules filled with heroin) and/or the means of transport (from Amsterdam to Brussels by train, from Brussels to Malta by airplane) which was to be used in order for this said drug heroin to be illegally brought and imported into Malta and this in order for the said drug to be eventually dealt with illegally within the Maltese Islands. EFOSA EFIONAYI agreed and planned with the abovementioned persons, to eventually make contact with and meet in Malta the person who was to receive the said drug in Malta (the brother of the said Ali) and to provide all the necessary assistance for this illegal activity which causes untold harm to Maltese society and an illegal financial gain to the accused, which financial gain was also at the basis of this conspiracy. Ali offered EFOSA EFIONAYI the sum of three thousand Euros (€3000) each time he imported drugs to Malta on his behalf.

In fact in execution of these pre-concerted plans, EFOSA EFIONAYI and the said Ali, Sam and “Fat Boy” agreed that before carrying the actual consignment of heroin to Malta, EFOSA EFIONAYI was to make an airtrip to Malta in order to obtain first hand evidence and valuable information about the point of entry in the Maltese Islands, including the nature and type of security checks and structures available, and thereby strengthening his confidence and determination in effecting the eventual drug deal.

EFOSA EFIONAYI first came to Malta on the 13th April 2008 on board of flight KM421 and he passed regularly through security check and out of the Malta International Airport. On the 14th April 2008, while in Malta, EFOSA EFIONAYI, Augustine Elechukwu Onuchukwu (Fat Boy) and Ali met in a house and spoke about the deal of smuggling drugs in Malta.

Following this successful trip, EFOSA EFIONAYI was again contacted by Ali and was informed that he was to travel back to Malta, this time carrying a consignment of the drug heroin. Ali informed EFOSA EFIONAYI that once again there was going to be "Fat Boy" travelling with him on the same flight from Brussels to Malta. This time round, EFOSA EFIONAYI was to travel to Malta from Brussels, Belgium on board KM421 on the night between the 20th and 21st April 2008. Ali made all travel arrangements, including the purchase of the airline ticket to EFOSA EFIONAYI from Brussels, Belgium to Malta.

EFOSA EFIONAYI agreed with Ali so that on the morning of Sunday 20th April 2008 he was to be in Amsterdam, The Netherlands in order to meet his brother, a certain Sam. The said Sam booked a hotel room in Amsterdam wherein to meet EFOSA EFIONAYI and Fat Boy. While there, Sam handed over seventy six capsules containing the drug heroin in powder form to EFOSA EFIONAYI, who swallowed them with some soup. EFOSA EFIONAYI therefore agreed to insert these capsules filled with the drug heroin in his body and to transport them inside his body to Malta via Brussels, Belgium. Sam gave the airline ticket to EFOSA EFIONAYI by means of which said EFOSA EFIONAYI was to reach Malta via Brussels, Belgium. Eventually Sam drove EFOSA EFIONAYI to the Amsterdam train station, from where EFOSA EFIONAYI boarded the train to Brussels, Belgium.

That same afternoon, EFOSA EFIONAYI arrived in Brussels, Belgium. Ali informed EFOSA EFIONAYI that both "Fat Boy" and his brother were going to board

the same flight to Malta with him, and that both of them were going to be carrying drugs as well. Once at the Brussels airport, EFOSA EFIONAYI met “Fat Boy” and Ali’s brother. These confirmed to EFOSA EFIONAYI that all of them were carrying drugs on their person and that everything was going to be fine. Then all of them checked in for the flight to Malta and boarded the Air Malta flight KM421 and eventually reached Malta. The accused was not authorized to be in possession of or import such dangerous drugs in terms of Law.

However before EFOSA EFIONAYI managed to leave the Malta International Airport towards his destination in Malta he was intercepted by the Malta Police Force, who managed to intervene in due time before this amount of drug heroin managed to reach its intended final destination in the Maltese Islands to the respective consignee as abovementioned. The Police effected a search on the person of EFOSA EFIONAYI and invited him to submit himself to an x-ray of his abdomen at the Mater Dei Hospital.

Following this examination, it transpired that EFOSA EFIONAYI was carrying inside his body seventy six capsules filled with a total net weight of the drug heroin in powder form of approximately 946.79 grams, with an approximate 30% purity (as determined later by the Court appointed expert). This consignment of the drug heroin was the subject matter of the abovementioned conspiracy. The street value of this drug as determined by the Court appointed expert amounted to between a minimum of forty five thousand four hundred and forty five Euro ninety two cents (€45,445.92) and a maximum of seventy thousand and sixty two Euro and forty six cents (€70,062.46).

The drug heroin is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, EFOSA EFIONAYI rendered himself guilty of conspiracy to trafficking in dangerous drugs (heroin) in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused EFOSA EFIONAYI of being guilty of having, on the night between the twentieth (20th) and twenty first (21st) day of April of the year two thousand and eight (2008) and during the previous days, weeks and months, with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in a drug (heroin) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 9, 10(1), 12, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that during the period of time mentioned in the abovementioned preceding count of this bill of indictment, and within the same

circumstantial context, that is to say on the night between the twentieth (20th) and twenty first (21st) day of April of the year two thousand and eight (2008) EFOSA EFIONAYI imported drugs illegally into the Maltese Islands.

The process leading to this importation of the drug heroin, saw EFOSA EFIONAYI agreeing and planning with a certain Ali, a certain Sam, a certain "Fat Boy" (who later was identified by the Malta Police as being a certain Augustine Onuchukwu Eluchukwu), and others about the nature and weight of the drug to be dealt with (heroin), the route to take (Amsterdam – Brussels – Malta) and/or packing and/or means of concealment (body-packing of capsules filled with heroin) and/or the means of transport (from Amsterdam to Brussels by train, from Brussels to Malta by airplane) which was to be used in order for this said drug heroin to be illegally brought and imported into Malta and this in order for the said drug to be eventually dealt with illegally within the Maltese Islands. Once on Maltese territory, EFOSA EFIONAYI was eventually to make contact with and meet the person who was to receive the said drug in Malta (the brother of the said Ali) and to provide all the necessary assistance for this illegal activity to be carried out.

EFOSA EFIONAYI was contacted by Ali and was informed that he was to travel to Malta carrying a consignment of the drug heroin from Brussels, Belgium on board flight KM421 on the night between the twentieth (20th) and twenty first (21st) day of April 2008. Ali made all travel arrangements, including the purchase of the relative airline ticket. Ali offered EFOSA EFIONAYI the sum of three thousand Euros (€3000) each time he imported drugs to Malta on his behalf.

On Sunday 20th April 2008 EFOSA EFIONAYI met Ali's brother (a certain Sam) and Fat Boy in a hotel in Amsterdam, The Netherlands wherein EFOSA EFIONAYI swallowed 76 capsules containing the drug

heroin in powder form with some soup brought over to him by the said Sam. Sam gave the relative airline ticket to EFOSA EFIONAYI and drove EFOSA EFIONAYI to the Amsterdam train station, from where EFOSA EFIONAYI boarded the train to Brussels, Belgium.

That same afternoon, EFOSA EFIONAYI arrived in Brussels, Belgium and he met "Fat Boy" and Ali's brother at Brussels airport. Both confirmed to EFOSA EFIONAYI that they were travelling with him to Malta on board the same flight and that all of them were carrying drugs on their person and that everything was going to be fine. Then all of them checked in for the flight to Malta and boarded the Air Malta flight KM421. The accused was not authorized to import such dangerous drugs in terms of Law.

Therefore on the 20th April 2008, EFOSA EFIONAYI boarded the flight KM421 leaving from Brussels, Belgium destination Malta, carrying these seventy six capsules filled with the drug heroin inside his body and eventually this flight arrived in Malta and consequently EFOSA EFIONAYI managed to knowingly import seventy six capsules containing the drug heroin in the Maltese Islands.

However before EFOSA EFIONAYI managed to leave the Malta International Airport towards his destination in Malta he was intercepted by the Malta Police Force, who managed to intervene in due time before this amount of drug heroin managed to reach its intended final destination in the Maltese Islands to the respective consignee. The Police effected a search on the person of EFOSA EFIONAYI and invited him to submit himself to an x-ray of his abdomen at the Mater Dei Hospital.

Following this examination, it transpired that EFOSA EFIONAYI was carrying inside his body seventy six capsules filled with a total net weight of the drug heroin in powder form of approximately 946.79 grams, with a purity of approximately 30% (as determined

later by the Court appointed expert). This consignment of the drug heroin was the subject matter of the abovementioned conspiracy. The street value of this drug as determined by the Court appointed expert amounted to between a minimum of forty five thousand four hundred and forty five Euro ninety two cents (€45,445.92) and a maximum of seventy thousand and sixty two Euro and forty six cents (€70,062.46).

The drug heroin is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, EFOSA EFIONAYI rendered himself guilty of importing or exporting, or cause to be imported or exported, or to take any steps preparatory to importing or exporting, any dangerous drug (heroin) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused EFOSA EFIONAYI of being guilty of having, on the night between the twentieth (20th) and twenty-first (21st) day of April of the year two thousand and eight (2008), with criminal intent, imported or exported, or caused to be imported or exported, or taken any steps preparatory to importing or exporting, any dangerous drug (heroin) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the

Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 9, 10(1), 12, 14, 15A, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) After the Attorney General premised in the Third Count of the Bill of Indictment that during the period of time mentioned in the abovementioned preceding two counts of this bill of indictment, and within the same circumstantial context, that is to say on the night between the twentieth (20th) and twenty first (21st) day of April of the year two thousand and eight (2008) EFOSA EFIONAYI was in possession of the dangerous drug heroin in the Maltese Islands.

The process leading to this illegal drug possession saw EFOSA EFIONAYI agreeing with a certain Ali, a certain Sam, a certain "Fat Boy" (who later was identified by the Malta Police as being a certain Augustine Onuchukwu Eluchukwu) among others to import the drug heroin into the Maltese Islands. On Sunday 20th April 2008 EFOSA EFIONAYI met Ali's brother (a certain Sam) and Fat Boy in a hotel in Amsterdam, The Netherlands and EFOSA EFIONAYI swallowed seventy six (76) capsules containing the drug heroin in powder form with some soup brought over to him by the said Sam. On the same afternoon of Sunday the 20th April 2008, EFOSA EFIONAYI reached Brussels airport by train from Amsterdam. He boarded the flight KM421 leaving from Brussels, Belgium destination Malta, carrying these seventy six (76) capsules filled with the drug heroin inside his body. Eventually this flight arrived and landed in Malta. The accused was not authorized to be in possession of such dangerous drugs in terms of Law. Therefore while in the Maltese Islands, EFOSA EFIONAYI was knowingly in possession of

these seventy six (76) capsules containing the drug heroin.

However before EFOSA EFIONAYI managed to leave the Malta International Airport towards his destination in Malta he was intercepted by the Malta Police Force, who managed to intervene in due time before this amount of drug heroin managed to reach its intended final destination in the Maltese Islands to the respective consignee as abovementioned. The Police effected a search on the person of EFOSA EFIONAYI and invited him to submit himself to an x-ray of his abdomen at the Mater Dei Hospital.

Following this examination, it transpired that EFOSA EFIONAYI was carrying inside his body seventy six capsules filled with a total net weight of the drug heroin in powder form of approximately 946.79 grams, with a purity of approximately 30% (as determined later by the Court appointed expert). This consignment of the drug heroin was the subject matter of the abovementioned conspiracy. The street value of this drug as determined by the Court appointed expert amounted to between a minimum of forty five thousand four hundred and forty five Euro ninety two cents (€45,445.92) and a maximum of seventy thousand sixty two Euro and forty six cents (€70,062.46).

The drug heroin is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

Consequently by committing the abovementioned acts with criminal intent, EFOSA EFIONAYI rendered himself guilty of being in possession of a dangerous drug (heroin) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was

not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses EFOSA EFIONAYI of being guilty of having, on the night between the twentieth (20th) and twenty-first (21st) day of April of the year two thousand and eight (2008) of being in possession of a dangerous drug (heroin) with criminal intent, as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use, and demanded that the accused be

proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 9, 10(1), 12, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of regulations 2, 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

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 three 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;

Now therefore declares Efosa Efionayi guilty of all three counts in the Bill of Indictment , namely of having been guilty :-

1. on the night between the 20th and 21st day of April of the year 2008 and during the previous days, weeks and months, with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in a drug (heroin) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy, and this according to the First Count of the Bill of Indictment;

2. on the night between the 20th and 21st day of April of the year 2008, with criminal intent, imported or exported, or caused to be imported or exported, or taken any steps preparatory to importing or exporting, any dangerous drug (heroin) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and this according to the Second Count of the Bill of Indictment;

3. on the night between the 20th and 21st day of April of the year 2008, of being in possession of a dangerous drug (heroin) with criminal intent, as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939), as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and

which drug was found under circumstances denoting that it was not intended for his personal use, and this according to the Third Count of the Bill of Indictment.

Having heard the evidence of Assistant Commissioner Neil Harrison, produced by the defence, who stated that, after examining the police case files, it results that accused had given valuable information against Agostin ElucHukwu Onu Chukwk and even made a statement under oath before a Magistrate implicating this person. As a result of this information Criminal proceedings were initiated against this other person and the accused also testified against him in the complication of evidence. Accordingly in the prosecution's view, the accused deserved to benefit from section 29 of Chapter 101 of the Laws of Malta.

Having considered the plea in mitigation made in the course of today's sitting by defence counsel Dr. Malcolm Mifsud and in particular that :-

- 1. Section 29 applied in this case;**
- 2. that the accused registered an early guilty plea;**
- 3. that accused himself was used by others to import the drugs into Malta;**
- 4. that he was an Algerian national whose family lived in Spain and was therefore completely isolated from his family;**
- 5. that following Court sentences in similar circumstances accused should not be sentenced to more than ten years imprisonment.**

Having considered the submissions made by counsel for the prosecution, Dr. Aaron Bugeja :-

- 1. this was a typical case of the importation of drugs from Spain, a *modus operandi* which was becoming increasingly popular;**
- 2. that although accused admitted his guilt at an early stage, he could do very little else as he had been caught red-handed;**

3. that although the information given by accused had led to criminal proceedings being instituted against a third person, his own involvement was a direct one and involved almost a kilo of heroin where the profit would have ranged between €45,000 and €70,000;
4. that accused had done all this for money and that his was a heinous crime.

Having considered local and foreign case law regarding a reduction in the punishment when the accused registers a early guilty plea, thereby avoiding useless work and expenses for the administration of justice (Vide “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, Criminal Court, [24.2.1997] ; “Il-Pulizija vs. Emmanuel Testa”, Court of Criminal Appeal, [7.7.2002] and **BLACKSTONE’S CRIMINAL PRACTICE**, (Blackstone Press Limited – 2001 edit.);

As was held by the Court of Criminal Appeal in its judgement in the case “Ir-Repubblika ta’ Malta vs. Mario Camilleri” [5.7.2002], an early guilty plea does not always necessarily and as of right entitle the offender to a reduction in the punishment.

The general rules which should guide the Courts in cases of early guilty pleas were outlined by the Court of Criminal Appeal in its preliminary judgement in the case : “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, [24.2.1997]; and by the Court of Criminal Appeal in its judgement “Il-Pulizija vs. Emmanuel Testa”, [17.7.2002]. In the latter judgement that Court had quoted from **BLACKSTONE’S CRIMINAL PRACTICE** , (Blackstone Press Limited – 2001 edit. ecc.) :-

“Although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established , the extent of the appropriate “discount” has never been fixed. In Buffery ([1992] 14 Cr. App. R. (S) 511) Lord Taylor CJ indicated that “something in the order of one-third

would very often be an appropriate discount”, but much depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount the court may have regard to the strength of the case against the offender . An offender who voluntarily surrenders himself to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount. (Hoult (1990) 12 Cr. App. R. (S) 180; Claydon (1993) 15 Cr. App. R. (S) 526) and so may an offender who , as well as pleading guilty himself , has given evidence against a co-accused (Wood [1997] 1 Cr. App. R. (S) 347) and/or given significant help to the authorities (Guy [1992] 2 Cr. App. R. (S) 24). 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) . Occasionally the discount may be refused or reduced for other reasons , such as where the accused has delayed his plea in an attempt to secure a tactical advantage (Hollington [1985] 85 Cr. App. R. 281; Okee [1998] 2 Cr. App. R. (S) 199.) Similarly , some or all of the discount may be lost where the offender pleads guilty but adduces a version of the facts at odds with that put forward by the prosecution , requiring the court to conduct an inquiry into the facts (Williams [1990] 12 Cr. App. R. (S) 415.) The leading case in this area is Costen [1989] 11 Cr. App. R. (S) 182 , where the Court of Appeal confirmed that the discount may be lost in any of the following circumstances : (i) where the protection of the public made it necessary that a long sentence , possibly the maximum sentence, be passed; (ii) cases of ‘tactical plea’ , where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence , and (iii) where the offender has been caught red-handed and a plea of guilty was practically certain

.....”

In this case it is obvious that accused was indeed caught red-handed and could not come up with much of a defence.

Having considered that, for purposes of punishment, the First and Second Counts of the Bill of Indictment regarding the crimes of conspiracy and importation respectively, should be absorbed in the offence of unlawful possession of drugs under circumstances which indicate that said drugs were not intended for the exclusive use of the offender, contemplated in the Third Count of the Bill of Indictment, as they served as a means to an end for the commission of the offence under the said Third Count of the Bill of Indictment in terms of Section 17 (h) of the Criminal Code (Chap.9) ;

Having considered the relevant case law of our Courts and of foreign courts regarding pleas in mitigation of punishment in cases of an admission of guilt at an early stage of the proceedings where Section 29 of chapter 101 is to apply.

Having seen Sections 2, 9, 10(1) 12, 14, 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(i) (3A)(a)(b)(c)(d)(7), 22(A), 24A, 26 and 29 of the Dangerous Drugs Ordinance (Chap.101); Regulations 2, 9 and 16 of the 1939 Regulations for the Internal Control of Dangerous Drugs (G.N. 292/1939) and Sections 17, 23, 23A, 23B, 23C and 533 of the Criminal Code ;

Now therefore condemns the said Efosa Efonayi to a term of imprisonment of eleven (11) years, and to the payment of a fine (multa) of thirty thousand Euros (€30,000), which fine (multa) shall be converted into a further term of imprisonment of eighteen (18) months according to Law, in default of payment ;

Furthermore condemns him to pay the sum of three thousand and forty one Euros and fifty two Euro cents (€3041.52) being the sum total of the expenses incurred in the appointment of Court

Experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Efosa Efionayi ;

And finally orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the chemist Mario Mifsud, under the direct supervision of the Deputy Registrar of this Court, who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties.

< Final Judgement >

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