



COURT OF CRIMINAL APPEAL

**HIS HONOUR THE CHIEF JUSTICE
VINCENT DE GAETANO**

Sitting of the 19th May, 2010

Criminal Appeal Number. 102/2010

The Police

v.

Waldemar Wiezik

The Court:

1. This is an appeal pursuant to an application filed by the Attorney General, who is claiming that the punishment awarded in this case was not according to law. The said Wiezik (son of Romano and Vanda nee Bugh, born on the 20th day of July 1959, holder of Polish Identity Card number 99433205) was arraigned before the Court of Magistrates (Malta) charged with having (1) on the 25th day of February 2010 at about 3.30 pm in St Julians, committed theft of a vehicle (reg no. LCI-227 Toyota) to the detriment of Giulia Camenzuli which theft is aggravated by “amount” – more than €2,325 – “means” and “nature of the thing stolen”; (2) with having at the same time and place driven the said vehicle without a

valid driving licence; and (3) with having committed the said crimes within the operational period of a suspended sentence of imprisonment delivered on the 10th day of December 2009. The prosecution requested that the accused be disqualified from holding a driving licence.

2. On the very same date he was arraigned, that is on the 28th day of February 2010, the said Waldemar Wiezik, assisted by Counsel for Legal Aid Dr Mark Busuttill, pleaded guilty to all the charges; he was duly warned by the court about the consequences of such a plea and was given time to retract it, but the accused persisted in his plea (see the minutes of the sitting of the 28/2/10).

3. Judgement was delivered on the 1st day of March 2010. The Court of Magistrates (Malta), having taken into consideration the sentence of six months imprisonment suspended for four years previously awarded on the 10th day December 2009, activated the said six months imprisonment and sentenced Wiezik to a total of thirteen (13) months imprisonment. That court further ordered that Waldemar Wiezik be disqualified from holding a driving licence for a period of six months from the expiration of the term of imprisonment.

4. The Attorney General appealed by means of an application filed on the 12th day of March 2010 (the records having been received by him on the 2nd day of March). Appellant contends that the punishment awarded was not according to law.

5. The appellant Attorney General is perfectly correct in his argument that the first court ignored completely the provisions of the Criminal Code applicable to this case. The respondent – Wiezik – pleaded guilty to all the charges, and therefore to the charge of theft as aggravated. The aggravations of amount, means (the use of a false key) and nature of the thing stolen (theft committed on a vehicle in a public place) clearly result from respondent's statement made to the police upon interrogation (see fol. 8 and 9). For some inexplicable reason, the first court referred only to paragraph (c) of

Article 261 of the Criminal Code, that is it referred only to the aggravation of amount. Suffice it to point out that the punishment for theft when aggravated by amount only – Article 279(b) of the Criminal Code – is of imprisonment from a minimum of thirteen months to a maximum of seven years. But the punishment awarded by the first court of thirteen months includes also the six months (originally suspended) awarded by the judgment of the 10th day of December 2009. So, in effect, the first court was sentencing respondent for the offence of theft, even if aggravated only by amount, to a punishment below the minimum, when there were no special and exceptional circumstances justifying going below the minimum. And apart from the aggravations of means and nature of the thing stolen, one has to put into the equation the punishment for the second offence with which respondent was charged, to wit, driving without a driving licence. It is therefore clear that the Attorney General's appeal is well founded at law.

6. For these reasons the Court allows the appeal and varies the judgment of the Court of Magistrates (Malta) of the 1st day of March 2010 by confirming that part of the said judgment whereby Waldemar Wiezik was declared guilty of the offences as charged, as well as that part where he was disqualified from holding any driving licence for a period of six months to commence to run from the date of the expiration of the sentence of imprisonment, but revokes that part of the same said judgment where he was sentenced to imprisonment for thirteen months, and instead sentences him to imprisonment for two years (the said two years obviously include the six months which were originally suspended).

< Final Judgement >

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