



CRIMINAL COURT

**THE HON. MR. JUSTICE
LAWRENCE QUINTANO**

Sitting of the 23rd January, 2012

Number 29/2010

**The Republic of Malta
Vs
Bunch Onyemachi Nnaka**

The Court,

Having seen the bill of indictment no. 29/2010 against the accused Bunch Onyemachi Nnaka wherein he was charged with:

- 1) After the Attorney General premised in the First Count of the Bill of Indictment that
on the first (1st) day of September of the year two thousand and nine (2009) and during the previous weeks BUNCH ONYEMACHI NNAKA 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 BUNCH ONYEMACHI NNAKA conspired and agreed with another person, a certain Alex, to illegally deal in and export from Belgium to the Maltese Islands a quantity of the drug heroin (985.95 grams). The accused agreed with Alex also about the route (Brussels, Belgium to Malta) and/or packing and/or means of concealment (body packing of capsules filled with the drug heroin) and/or the means of transport (air travel) which was to be used in order for this quantity of drugs to be illegally brought and imported into Malta and this in order for the said drugs to be eventually dealt with illegally within the Maltese Islands. For this task the accused was to receive a monetary compensation of one thousand Euros (1,000). BUNCH ONYEMACHI NNAKA agreed and planned with Alex that in Malta he would temporarily reside at the St. Julian's Hotel and eventually deliver the said drugs to the person who contacted him at the hotel for their eventual trafficking and distribution in the Maltese Islands. In execution of these pre-concerted plans the accused agreed to provide all the necessary assistance for this illegal activity to take place, which activity causes untold harm to Maltese society and an illegal financial gain to the accused, which financial gain was at the basis of this conspiracy.

In execution of these pre-concerted plans, before going to the airport, BUNCH ONYEMACHI NNAKA met Alex in Brussels and while there the accused agreed to insert, and actually inserted one hundred (100) capsules in his body (through his mouth). These one hundred capsules were filled with the illegal drug heroin.

On the 1st September 2009, BUNCH ONYEMACHI NNAKA boarded the Air Malta flight KM 421 leaving from Brussels destination Malta, carrying these one hundred capsules filled with the drug heroin. On this date the accused arrived in the Maltese Islands carrying in his body these one hundred capsules filled with drug heroin.

BUNCH ONYEMACHI NNAKA was not authorized to be in possession of or to import such dangerous drugs in terms of Law.

However, before the accused managed to leave the Malta International Airport towards his destination in Malta, he was stopped by the Customs Officials, who managed to intervene in due time before this amount of drugs managed to reach its intended final destination in the Maltese Islands to the respective consignee of the said drugs. The Customs Officers at the Malta International Airport affected a search on the person of BUNCH ONYEMACHI NNAKA due to his suspicious behavior and subsequently they decided to inform the Malta Police Force. The Malta Police Force invited the accused to submit himself to an x-ray of his abdomen at the Mater Dei Hospital. Following this examination, it transpired that the accused was carrying inside his body one hundred capsules. These capsules were filled with circa 985.98grams of the drug heroin with its purity calculated at 41%, (as determined later by the Court appointed expert). This consignment of drugs was the subject matter of the abovementioned conspiracy. The total street value of this drug as determined by the Court appointed expert was of around forty five thousand and three hundred Euros (45,300)

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, BUNCH ONYEMACHI NNAKA rendered himself guilty of conspiracy to trafficking in the dangerous drug 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 BUNCH ONYEMACHI NNAKA of being guilty of having, on the first(1st) day of September of the year two thousand and nine (2009) and during the previous weeks with

criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in drugs (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 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 within and during the same context of place, time, facts and circumstances mentioned in the preceding count of this bill of indictment, that is to say on the first (1st) day of September of the year two thousand and nine (2009) and during the previous weeks, BUNCH ONYEMACHI NNAKA decided to export from the Belgium a quantity of the drug heroin to be imported to the Maltese Islands.

While in Brussels, Belgium the accused met a certain Alex and agreed that this drug heroin consignment was to be transported from Belgium to Malta by air transport. On the 1st September 2009 the accused inserted one hundred capsules in his body (from his mouth) filled with the drug heroin. The accused later boarded flight Air Malta KM 421 leaving from Brussels, Belgium destination Malta, carrying

these one hundred capsules filled with the drug heroin in his body. On this date this flight arrived and landed in Malta. BUNCH ONYEMACHI NNAKA was not authorized to import such dangerous drugs in terms of Law. The accused therefore managed to knowingly and illegally import in the Maltese Islands one hundred capsules containing the drug heroin.

However, before the accused managed to leave the Malta International Airport towards his destination in Malta, he was stopped by the Customs Officials, who managed to intervene in due time before this amount of drugs managed to reach its intended final destination in the Maltese Islands to the respective consignee of the said drugs. The Customs Officers at the Malta International Airport affected a search on the person of BUNCH ONYEMACHI NNAKA due to his suspicious behavior and subsequently they decided to inform the Malta Police Force. The Malta Police Force invited the accused to submit himself to an x-ray of his abdomen at the Mater Dei Hospital. Following this examination, it transpired that the accused was carrying inside his body one hundred capsules. These capsules were filled with circa 985.98grams of the drug heroin with its purity calculated at 41%, (as determined later by the Court appointed expert). The total street value of this drug as determined by the Court appointed expert was of around forty five thousand and three hundred Euros (€45,300)

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, BUNCH ONYEMACHI NNAKA rendered himself guilty of importing or exporting, or cause to be imported or exported, or 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 BUNCH ONYEMACHI NNAKA of being guilty of having, on the first (1st) day of September of the year two thousand and nine (2009), with criminal intent, imported or exported, or cause 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 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 within and during the same context of place, time, facts and circumstances mentioned in the preceding counts of this bill of indictment, that is to say on the first (1st) day of September of the year two thousand and nine (2009) and during the previous weeks, BUNCH ONYEMACHI NNAKA agreed to export from Belgium a quantity of the drug heroin to be imported to the Maltese Islands. While in Brussels the accused agreed with a certain Alex to transport inside his body a drug heroin consignment from Brussels, Belgium to Malta by air transport. BUNCH ONYEMACHI NNAKA inserted one hundred capsules in his body (from his mouth). These one hundred capsules contained the illegal drug heroin. On the 1st September 2009 the accused boarded flight Air Malta KM 421 leaving

from Brussels, Belgium destination Malta, carrying these one hundred capsules filled with the drug heroin. On this date this flight arrived and landed in Malta. The accused was therefore knowingly and illegally in possession of one hundred capsules containing the drug heroin while in the Maltese Islands which drug was found under circumstances denoting that it was not intended for his personal use.

However, before the accused managed to leave the Malta International Airport towards his destination in Malta, he was stopped by the Customs Officials, who managed to intervene in due time before this amount of drugs managed to reach its intended final destination in the Maltese Islands to the respective consignee of the said drugs. The Customs Officers at the Malta International Airport affected a search on the person of BUNCH ONYEMACHI NNAKA due to his suspicious behavior and subsequently they decided to inform the Malta Police Force. The Malta Police Force invited the accused to submit himself to an x-ray of his abdomen at the Mater Dei Hospital. Following this examination, it transpired that the accused was carrying inside his body one hundred capsules. These capsules were filled with circa 985.98grams of the drug heroin with its purity calculated at 41%, (as determined later by the Court appointed expert). The total street value of this drug as determined by the Court appointed expert was of around forty five thousand and three hundred Euros (€45,300)

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, BUNCH ONYEMACHI NNAKA 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, accused BUNCH ONYEMACHI NNAKA of being guilty of having, with criminal intent, 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 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 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 the joint application filed by the Attorney General and the accused on the 9th January, 2012, whereby, after declaring that in the event that the accused was filing a guilty plea to the charges brought forward in his regard in the above referred to Bill of Indictment, requested that the punishment to be awarded should consist of a term of imprisonment of eleven (11) years and the imposition of a fine of twenty five thousand Euros (€25,000) together with the other sanctions and consequences that are prescribed by law upon conviction in terms of the provisions of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, including the confiscation of any monies and other movable and immovable property of the accused.

Having seen that in today's sitting the accused, in reply to the question as to whether he was guilty or not guilty of all the charges preferred against him under the 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, after being granted such a time, persisted in his statement of admission of guilt;

Now therefore declares Bunch Onyemachi Nnaka guilty of all counts in the Bill of Indictment, namely of having:-

1. on the 1st day of September, 2009, conspired for the purpose of selling or dealing in drugs (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 1st day of September, 2009, imported or exported, or cause 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 1st day of September, 2009 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 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 considered local and foreign case law regarding a reduction in the punishment when the accused registers an 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. The Court notes that a guilty plea was filed even while the Court was sitting as a Court of Criminal Inquiry.

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 all the circumstances of the case, this Court is satisfied that the combination of sanctions and measures requested by the prosecution and the accused are those which it would have been lawful for it to impose upon conviction for the offences to which the accused has pleaded guilty and that it does not have cause to order the trial of the cause to be proceeded with or to reject said request for any other reason.

Having considered the guilty plea of the accused after the Court explained to him in clear terms the consequences of his request, now proceeds to pass the sentence indicated to it by the parties as aforesaid.

Having seen articles 2, 9, 10(1), 12, 14, 15A, 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 (Chap.101); 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 (Cap. 9 of the Laws of Malta).

Now, therefore, condemns the said Bunch Onyemachi Nnaka to a term of imprisonment of eleven (11) years, and to the payment of a fine (multa) of twenty five thousand Euros (€25,000), which fine (multa) shall be converted into a further term of imprisonment of eighteen months according to Law, in default of payment within fifteen days ;

Furthermore condemns him to pay the sum of one thousand, four hundred and eighty seven Euros and seventy eight Euro cents (€1487.78) being the sum total of the expenses incurred in the appointment of Court

Informal Copy of Judgement

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

Should this sum not be paid within nine months, then it should be converted into a prison term in accordance with the law.

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 movable and immovable property belonging to the said Bunch Onyemachi Nnaka.

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 as soon as possible by Godwin Sammut 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 the said drugs are required in evidence against third parties.

< Final Judgement >

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