



CRIMINAL COURT

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

Sitting of the 26 th September, 2012

Number 31/2010

**The Republic of Malta
Vs
Stephen Nana Owusu**

The Court,

Having seen the bill of indictment no. 31/2010 against the accused Stephen Nana Owusu wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that Stephen Nana Owusu, arrived in Malta on the 13th July 2009 with flight KM421 from Brussels. He was arrested by the Police on suspicion that he was carrying drugs. He was taken to Mater Dei hospital and an xray of his stomach revealed that he was carrying a number of foreign objects. At that stage the accused Stephen Nana Owusu admitted that he was carrying an amount of capsules full of heroin in inside his

body. In fact, days before in Barcelona, he agreed with a certain Nigerian friend known as 'Guy' to swallow such capsules and smuggle them in Malta. He also agreed that he had to stay in Malta for four days and pass the heroin to another person who resided in Malta. The latter had to pay him for such service. In total he carried 74 capsules the total weight of which was 799.75grms of heroin of 41.3% purity.

By committing the abovementioned acts with criminal intent, Stephen Nana Owusu, rendered himself guilty of conspiracy for the purpose of selling or dealing in a drug in these Islands in breach of the provisions of the Dangerous Drugs Ordinance or for having promoted, constituted, organized or financed the conspiracy.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused Stephen Nana Owusu of being guilty of having, on the 13th July 2009 and the previous days, 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 is 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)(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 under the circumstances indicated in the first count of the Bill of Indictment that is, after having agreed with Guy to import drugs in Malta, the accused Stephen Nana Owusu arrived in Malta on the 13th July 2009 on flight KM421 from Brussels. In side his body Stephen Nana Owusu was carrying seventy four (74) capsules filled with a total net weight of 799.75grms of heroin of 41.3% purity.

The drug heroin is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance.

By committing the abovementioned acts with criminal intent, Stephen Nana Owusu rendered himself guilty of importing or cause to be imported or to take any steps preparatory to importing any dangerous drug (heroin) into 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 Stephen Nana Owusu of being guilty of having, on the 13th July 2009, with criminal intent, imported or caused to be imported or taken any steps preparatory to importing any dangerous drug (heroin) into 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 under the circumstances indicated in the first count of the Bill of Indictment and specifically on the 13th July 2009, Stephen Nana Owusu landed in Malta in possession of seventy four (74) capsules filled with a total net weight of 799.75grms of heroin of 41.3% purity. He was carrying the drug illegally inside his stomach and the considerable amount of heroin was not intended for his personal use but to be passed on to another person in Malta.

Heroin is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. That accused was not authorized to be in possession of such dangerous drugs in terms of Law.

Consequently by committing the abovementioned acts with criminal intent, Stephen Nana Owusu 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 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 Stephen Nana Owusu guilty of having, on the 13th July 2009 been 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; 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 the sitting of the 20th September, 2012 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;

Having noted that during the sitting of the 20th September 2012 the accused pleaded guilty to all three counts preferred against him which plea he confirmed after the Court gave him sufficient time to reflect on this guilty plea.

Now therefore declares Stephen Nana Owusu guilty of all counts in the Bill of Indictment, namely of having:-

1. on the 13th July 2009 and the previous days, 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 13th July 2009, with criminal intent, imported or caused to be imported or taken any steps

preparatory to importing any dangerous drug (heroin) into 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 13th July 2009 been 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 submissions of the Prosecution and of the Defence about the penalty to be imposed.

Having examined other cases decided by the Criminal Court which are similar but not necessarily identical.

Having also considered that the first and second counts can be considered as absorbed in the third count in accordance with article 17(h) of the Criminal Code.

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"

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 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 for the Internal Control of Dangerous Drugs (L.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, the Court condemns Stephen Nana Owusu to a prison term of 11 years and to the payment of a fine (multa) amounting to €30,000 which fine (multa) Stephen Nana Owusu has to pay within two months or else the fine (multa) is to be converted into a term of one year imprisonment in accordance with the law.

Moreover, in accordance with section 533 of Chapter 9 of the Laws of Malta, Stephen Nana Owusu is to pay the expenses incurred in connection with the appointment of experts, which expenses amount to one thousand and thirty two Euros and seventy one Euro cents (€1032.71).

Should this sum not be paid within fifteen days, 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 Stephen Nana Owusu.

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 the Assistant Registrar 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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