



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

MICHAEL MALLIA

Sitting of the 10 th April, 2014

Criminal Appeal Number. 166/2013

Appeal No: 166/2013

The Police

Vs

Yoan Joseph Suarez

Today, 10th April, 2014,

The Court,

Having seen the charges drawn against the appellant , Yoan Joseph Suarez , holder of Maltese identity card number 54698A , before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

1 . In these Islands on 12 April, 2013 and during the month before that date, had in

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his possession all the Cannabis plant or portion thereof in violation of Article 8 (d) Cap 101 of the Laws of Malta;

The Court was kindly asked to in case of guilt, except from inflicting the penalties established by the Law, also orders the confiscation of all items exhibited.

The Court was also asked in case of guilt order the payment of costs relating to the appointment of an expert or experts in the proceedings as contemplated in Article 533 of Chapter 9 of the Laws of Malta.

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature , delivered on 13 April 2013, wherein the Court, having seen section 8 (d), sections 4 and 6 , sections 22 (1) (a) and 22 (2) (b) (ii) of Chapter 101 and Regulation 9 of GN 292/1939 found the accused guilty of the charges brought against him, but in light of the considerations made above, and pursuant to Article 7 of Chapter 446 of the Laws of Malta, the Court is placing the guilty party under a probation order for a period of three years.

The Court warned the guilty party of the consequences according to law if he commits another offense during the period of probation or fails to follow any of the orders set out in the Order of Probation and offender expressed his willingness to comply with the requirements of this order .

Having seen the appeal of the said Yoan Joseph Suarez, filed in the registry of this Court on 23 April 2013, asking this Court to reform the judgment by confirming the part where appellant was found guilty of the offense charged against him and revoke that part which placed the offender under Order of Probation for a period of three years, and instead dispense punishment that fits the circumstances of the case.

Having seen the acts of the proceedings.

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Having seen the updated criminal records of appellant exhibited by order of the Court.

Having seen the appellant's grounds for appeal as follows:-

The plea is clear and manifest and consists in the fact that the first judgment proffered by the honourable Court was too hard taking into account all of the circumstances of the case. It is said with the utmost respect that although the Court, in its judgment, observed that it was taking into account the cooperation of the police Yoan Joseph Suarez and his early admission, to suggest that these factors have been given due consideration when the court sentenced the exponent. It says that when prosecuted, Yoan Joseph Suarez at first admitted the charges unconditionally and cannot be said that this admission was one of a tactic.

The conditions imposed in the order of probation are not only too hard, but it's with the greatest respect injurious to his rights enshrined in article 5 of the European Convention. The conditions that he cannot leave these islands without the permission of the Court is an impediment that should not be given a determination of guilt in the case that the Court can select an alternative way to sentence of imprisonment. Effectively, conditions of release from custody which seems equalization is made by the Court of Magistrates.

Considers,

That the facts of this case are not in issue. Sometime in April 2013 the police from the Sliema police station found a picture of appellant with a written allegation that the person shown on the photograph takes drugs and lives in Savoy Gardens. The police contacted the appellant who went immediately to the police station. The police then decided to affect a search in his residence where a small amount of cannabis was found on his property. The appellant was brought to Court to face charges that on April 2013 and the months preceding he was in possession of the drug cannabis without due authorization. The Court proceeded to hear the case and appellant

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registered a guilty plea, whereupon the Court informed the appellant that this admission would mean a maximum penalty of one year imprisonment and gave ample time to the appellant to seek the advice of his lawyer and see whether he wished to review his plea. Appellant consulted his lawyer and confirmed his guilty plea whereupon the Court proceeded to give judgement finding accused guilty and was condemned to a probation order of three (3) years.

Appellant was aggrieved by this judgement and filed an appeal claiming that the penalty was too harsh under the circumstances. During submissions the defence claimed that there was an agreement with the Prosecution that a conditional discharge would be appropriate but the Court went its way and requested this Court to review the first judgement requesting a confirmation of that part of the judgement that found appellant guilty and revoking the probation order and instead deliver a punishment more appropriate to this case.

Considers,

That from the records of the case nowhere does it result that there was an agreement between the defence and the prosecution for a conditional discharge to be imposed. Instead we have an unconditional admission on the part of the appellant whereby the Court justly informed him of the maximum penalty such an admission would incur and gave him sufficient time to seek the advice of his lawyer as to whether he would insist on the guilty plea. After seeking this advice appellant decided to confirm his guilty plea. The Court then proceeded to give judgement after taking into consideration the early admission the appellant, the fact that he co-operated with the police, had a clean criminal record and even though he has been working in Malta for the last three years, from his statement to the police, appellant manifested his desire to rid himself of a drug problem.

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This Court feels that the Magistrates' Court was totally correct in its assessment and if there was an agreement between the defence and the prosecution, the Court is not bound by that agreement but must bring this to the notice of the parties. Since the agreement alleged between the defence and the prosecution is not registered in the acts of this case there is no evidence of its existence and the first Court was therefore right in pronouncing judgement in the way it thought fit under the circumstances. This judgement is reasonable and legal, the punishment is within the parameters of the law and therefore this Court does not feel that it should disturb the discretion exercised by the first Court.

For this reason the Court dismisses the appeal and confirms the first judgement.

< Final Judgement >

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