



MALTA

**CRIMINAL COURT**  
**THE HON. MR. JUSTICE**  
**ANTONIO MIZZI**

Sitting of the 15 th December, 2014

Number 27/2013

**BILL OF INDICTMENT No. 27/2013**

**THE REPUBLIC OF MALTA**

**Versus**

**Nelson Arias**

**[holder of Dutch passport no. NW5KKHB22]**

The Court,

Having seen the bill of indictment no. 27/2013 against the accused Nelson Arias wherein he was charged with :

1. After the Attorney General premised in the first and only Count of the Bill of Indictment that on the second (2<sup>nd</sup>) day of November of the year two thousand and eight (2008) and during the previous days and weeks, the accused Nelson Arias, also known as

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“Paco” (hereinafter referred to as “PACO” or the “accused” as the case may be) decided to start dealing, offering, supplying and importing drugs illegally into the Maltese Islands in agreement with others.

In fact on the dates abovementioned, the accused **NELSON ARIAS** conspired and agreed with another person outside Malta to illegally deal in, import and receive from the Netherlands to the Maltese Islands a quantity of the drug cocaine.

The accused and the other person agreed that this drug consignment was to be exported from the Netherlands and imported into Malta by a man, that later resulted to be a certain Jose Julio Buis, who was to travel from the Netherlands to Malta by air, and once in Malta this Buis was to meet the accused and deliver to him the drug consignment. Both the accused and Buis communicated with the same person outside Malta in relation to their respective roles in this conspiracy. The accused was going to receive compensation in money for his involvement in this conspiracy.

The accused and the other person outside Malta agreed about the mode of action as to how this drug consignment was to reach Malta and eventually how it was to be dealt with in Malta following its arrival. The accused was due to receive this drug consignment through Jose Julio Buis following the latter’s arrival in Malta.

In execution of the said plan, on the 31<sup>st</sup> October 2008 Buis boarded the Air Malta flight KM395 leaving from Amsterdam, the Netherlands destination Malta, carrying inside his body a total of 70 capsules filled with the said quantity of the drug cocaine in order to eventually deliver the said drug to the accused. However, the Malta Police Force managed to intervene in due time before this amount of drug cocaine managed to reach its intended final destination in the Maltese Islands to the respective consignee.

The Police apprehended Jose Julio Buis following his arrival in Malta at the Malta International Airport. After that he was conducted to Mater Dei Hospital, it transpired that Buis had ingested 70 capsules carrying circa 675.04 grams of the drug cocaine with a purity of circa 45% as determined later by the Court appointed expert. The street value of this drug as determined by this expert varied between circa forty five thousand two hundred twenty seven Euro (€45,227) and seventy thousand seven hundred forty four Euro (€70,744).

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Buis decided to cooperate with the Police and informed them that he was sent to Malta by another person in order to carry this drug consignment. Buis also stated that he was given instructions to deliver this consignment to a certain "PACO". It later transpired that this "PACO" was in fact none other than the accused Nelson Arias. Buis knew Nelson Arias since 1989 as he was part of a Dominican group and lived also in The Netherlands. Buis identified Paco's picture shown to him by the Police and later agreed to collaborate with the Police. Buis agreed to take part in a controlled drug delivery, which eventually led to the arrest of the accused. In fact, on the 2<sup>nd</sup> November 2008, the accused was apprehended by the police just as he was going to receive a bag, supposedly carrying the drug consignment, when the accused realised that there were the Police officers and tried to escape, only to be apprehended by the Police some distance away.

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

By committing the abovementioned acts with criminal intent, the accused **NELSON ARIAS** rendered himself guilty of conspiracy to deal in dangerous drugs (cocaine) 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, accuses **NELSON ARIAS** of being guilty of having, on the second (2<sup>nd</sup>) day of November of the year two thousand and eight (2008) and during the previous days and weeks, 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 (cocaine) 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 demands 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 of the accused, as is stipulated and laid down in

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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, Chapter 101 of the Laws of Malta and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilt 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 fifteenth day of December, 2014 whereby, after declaring that in the event that the accused admits to the charge preferred against him in the bill of indictment, the punishment to be awarded by this same Honorable Court, following the application of section 29 by two degrees, will consist of a term of imprisonment of eight (8) years four (4) months and the imposition of a fine of six thousand five hundred euro (€6500) together with the other sanctions and consequences that are mandatorily 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 in accordance to law.

Having seen that in the sitting of the fifteenth day of December, 2014 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 Nelson Arias guilty of the only count in the Bill of Indictment, namely of having:-

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1. on the second (2<sup>nd</sup>) day of November of the year two thousand and eight (2008) and during the previous days and weeks, 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 (cocaine) 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;

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*

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*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 seen articles 2, 9, 10(1), 12, 14, 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance (Chap.101); Regulations 4 and 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (L.N. 292/1939) and of articles 17, 18, 20, 22, 23 and 533 of the Criminal Code (Cap. 9 of the Laws of Malta).

Now, therefore, condemns the said Nelson Arias to a term of imprisonment of eight years and four months, and to the payment of a fine (multa) of six thousand five hundred Euro (€6,500), which fine (multa) shall be converted into a further term of imprisonment according to Law, in default of payment within fifteen days ;

Furthermore condemns him to pay the sum of one thousand, one hundred and sixty Euro (€1160) 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;

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 Nelson Arias.

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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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