



Criminal Court

Onor. Madame Justice. Dr. Edwina Grima LL.D.

Admission Nr: 9/2014

The Republic of Malta

Vs

Alexander Restrepo Diaz

Today the 16th December, 2015,

The Court,

Having seen the charges brought against the accused Alexander Restrepo Diaz, holder of Spanish residence permit number El 4540252 and Columbian passport number CC10026132 accused with having:

On these Islands or abroad, on the 7th August, 2012 and during the previous days:

- a) Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in the drug cocaine in these Islands against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;
- b) Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cocaine) into Malta in breach of section 15A of Chapter 101 of the Laws of Malta;

- c) Had in his possession the drug cocaine 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 authorisation 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 licenced or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drug was 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 (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use.

The Court is requested to treat the accused as being a recidivist by means of a judgement handed over by a Spanish Court.

The Court is also humbly requested to apply Section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court-appointed Experts.

Having seen the minutes of the proceedings of the 9th August, 2012 as drafted by the Court of Magistrates, whereby the accused Alexander Restrepo Diaz admitted to the charges brought against him and confirmed this guilty plea even after the Court explained to him the consequences of this guilty plea.

Having seen the Attorney General's note presented together with the acts of these proceedings in the registry of this Court on the 20th August, 2014, whereby the Attorney General declared that in terms of the proviso of article 392B(2) of Chapter IX of the Laws of Malta, the charges proffered against the said Alexander Restrepo Diaz before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, to which

the accused has registered the aforementioned guilty plea, should be considered as a Bill of Indictment for all the purposes and effects of Law.

Having seen the acts of the proceedings.

Having seen the updated conduct sheet of Alexander Restrepo Diaz.

Having heard the testimony of the accused and this with regards to the punishment to be inflicted,

Having heard submissions by the parties.

Considers,

In this respect, that in view of the guilty plea filed by Alexander Restrepo Diaz in front of the Court of Magistrates (Malta) on the 9th August, 2012, which plea was duly confirmed on that same day, the Court cannot but declare Alexander Restrepo Diaz guilty of having:

On these Islands or abroad, on the 7th August, 2012 and during the previous days:

- a) Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in the drug cocaine in these Islands against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;
- b) Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cocaine) into Malta in breach of section 15A of Chapter 101 of the Laws of Malta;
- c) Had in his possession the drug cocaine 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 authorisation 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 licenced or otherwise

authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drug was 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 (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use.

Considers,

Although the punishment with regards to the crimes the accused has admitted to having committed, is of life imprisonment, however article 492(1) of the Criminal Code provides that if at any stage of the proceedings, before the constitution of the jury, the accused admits to the charges brought against him and for the fact admitted by the accused there is established the punishment of imprisonment for life, the court may, instead of the said punishment, impose the punishment of imprisonment for a term from eighteen to thirty years. Also according to the proviso to article 22(2)(a)(i)(aa) of Chapter 101 of the Laws of Malta, where the court is of the opinion that, when it takes into account the age of the offender, the previous conduct of the offender, the quantity of the drug and the nature and quantity of the equipment or materials, if any, involved in the offence and all other circumstances of the offence, the punishment of imprisonment for life would not be appropriate then the Court may sentence the person convicted to the punishment of imprisonment for a term of not less than four years but not exceeding thirty years and to a fine (multa) 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).

That in considering the punishment to be inflicted, therefore, in this case, the Court will take into consideration first and foremost the guilty plea filed by accused. The Court, however, cannot ignore the fact that the accused formed part of a larger ring of traffickers wherein his participation as a drug courier in this conspiracy was not a minimal one thus having an influence on the drug-trafficking chain. Also accused was found in possession of 52 capsules of cocaine having a net weight of 500.18 grammes with a purity of around 24.7% and a retail price of around €40000, which drug was to be passed on to another person in Malta of Columbian nationality for the purpose of trafficking. For this operation he was to receive the sum of three thousand euros. The accused, however, collaborated fully with the police in the investigations carried out in connection with this drug-trafficking chain and consequently a mitigation in the punishment to be inflicted will be affected, after taking note of the declaration made by the Prosecution that the accused is to benefit from the application of Section 29 of Chapter 101 of the Laws of Malta to the full.

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 Informal Copy of Judgement Page 14 of 17 Courts of Justice 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 .....”*

Consequently in view of the above-made considerations and after having seen articles 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f), 22(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), 26 and 29 of Chapter 101 of the Laws of Malta and regulations 4 and 9 of Subsidiary Legislation 101.2 and articles 17(h), 23, 31, 49, 50 u 533 of the Criminal code condemns the said Alexander Restrepo Diaz to a term of imprisonment of eight

years and the imposition of a fine of twenty thousand euros (€20000), which fine (multa) shall be converted into a further term of imprisonment of one year according to Law, in default of payment;

Furthermore condemns him to pay the sum of five thousand, one hundred and forty two Euros and sixty-six cents (€5142.66) 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;

Moreover, 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 moveable and immovable property belonging to the said Alexander Restrepo Diaz.

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 by the Assistant Registrar of the Criminal Court, 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 said drugs are required in evidence against third parties.

(ft) Edwina Grima

Judge

Franklin Calleja

Deputy Registrar