

Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: NADDP 01/2017

Anti-Doping Commission (Malta)

-vs-

Dixon Scott (Athlete member of the Malta Boxing Association)

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of lawyer Dr. Maria Azzopardi (lawyer) as Chairperson, and Dr. Chris Dalli (lawyer) and Mr. Mark Zammit (pharmacist) as members.

Before the commencement of this proceeding, Dr. Chris Dalli and Mark Zammit declared to the Chairperson that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review. The same declaration was made by the Chairperson to the 'Panel'.

1. Preliminaries

Considered the Request by the National Anti-Doping Commission (Ref. No. ITSTSCODIX-16 of the 5th April, 2016 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Scott Dixon of the Anti-doping Regulations (Legal Notice 17 of 2015, Sports Act, Chapter 455, Laws of Malta). Considered that the case was deferred on the 7th of July, 2016 and on the 7th of October, 2016 in order to establish the composition of the Panel. The case was then heard on the 27th of January 2017.

Took note and reviewed the following documents that were forwarded to the Panel and to the athlete at the initial stage by the Coordinator of the Anti-Doping Programme, namely:

- (i) A copy of the Supplementary Report Form filed by NADO doping control officer Johann Pace following the attempted doping test on the 12th March 2016 at the (Doc 1);
- (ii) The request by NADO to the National Association/Federation dated the 14th of March 2016 of the alleged breach by Scott Dixon dated (Doc 2b);
- (iii) Letter of Notification by NADO to Scott Dixon dated 14th March 2016 of a possible violation of the Anti-Doping Rules (Doc 4b);
- (iv) The request to the Panel to schedule a hearing dated 5th April, 2016 (Doc 7a);
- (v) Scott Dixon's Submissions from his legal representative Dr. Veronique Dalli dated 5th April, 2016 (Doc 8a);
- (vi) The ADC Submissions from Dr Christina Borg Debono dated 30th June, 2016;
- (vii) Facebook Pages of the Malta Boxing Commission referring to a boxing event in which Scott Dixon took part (Doc 9b to 9f).



Took note of the Notice issued by the Panel to Scott Dixon to appear before the Panel on the 27th of January, 2017 at 1800 following several attempts to set up a sitting and to compose an independent and impartial Panel to answer to the accusation based on Article 3(2)(c) of L.N 17 of 2015 of the Laws of Malta: *“Evading sample collection, or without compelling justification, refusing or failing to submit to sample collection after notification as authorised in these regulations: Provided that, ‘evading sample collection’ shall also be achieved if it is established that an athlete was deliberately avoiding a doping control official to evade notification or testing,”* (Doc 14). Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the Malta Boxing Association and Sport Malta.

2. Factual Background:

2.1 Heard and took note of the evidence given under oath during the sitting of the 27th January, 2017 during which:

a) Ignatius Zammit designated on the day as National Anti-Doping Program coordinator of NADO gave evidence under oath. Reference is being made to the salient points of the evidence given by Mr Zammit in relation to the notification *“He was there discussing what happened in that particular bound which unfortunately he lost. Then I went next to the athlete and telling him “Listen I am Ignatius Zammit from NADO Malta and you were chosen for doping control”. He refused and told me that he doesn’t want to be tested. I told him listen you need to be tested since if you don’t get tested you can face some consequences which could be up to a four year ban. He still refused. I told him at least sign that you were notified and he told me that he was not going to sign since he said that he had to be informed before the actual competition. Then there was Ms. Casey Pace who came next to me and told me that if Scott Dixon says that he does not want to be tested, it is difficult to convince him otherwise. I told him that there are consequence and try to do your best and talk to him yourself. She said that she would try to talk to him. She informed that he does not want to be tested. Then there was a coach in his team, Mr. Charles Muscat, who said that it is difficult to convince him otherwise and if he does not want to be tested. He volunteered to talk to him and he came back and told me that he tried but Scott Dixon does not want to be tested. I told Mr. Charles Muscat to at least sign to show that he was a witness on a supplementary form but he did not want to sign any forms as well. Mr. Charles Muscat. He is a coach in Mr. Dixon’s team. Then I went to search for Mr. Marc James cause I needed a witness. Mr. James was behind the ring and I informed him that there was this situation. He came with me to the changing room and told Mr. Dixon that he had to be tested otherwise there will be consequences. Mr. Dixon told us listen I don’t want to be tested as a matter of fact I will even report you to WADA and to the European Association. He left the changing room and Mr. Marc James went to tell him to come but Mr. Dixon refused and left the premises.”* Furthermore he made reference to Doc 1, that is, the Supplementary Report Form and confirmed that the first paragraph was filled by him and the second paragraph was filled up by Mr Marc James. When asked about the procedure of notification of the athlete by the defence council, Mr Zammit stated that *“Ideally we follow the “No Advance” notice policy. The “No Advance” Notice meaning that we try to do our best and inform the athlete after the competition and then from that time onwards the person is escorted.”* Mr Zammit was asked *“No Advance” means.. could it be interpreted as just before? There is no advance.”* and to this he replied as follows *“No. Cause there are events for instance were if I inform Mr. Scott Dixon before the bound or competition the competition started at 8 and we started doing the test at 1 so there are five hours in between. And with five hours in between there could be room for abuse.”* Furthermore, when asked by defence council on the basis of which regulations he is claiming that there is no obligation to give any prior notice to the athletes of a possible doping test, he made reference to Paragraph 5.3.1 of the International Standards on Testing which establish the no advance notice policy.

b) Scott Dixon gave evidence under oath and the Panel feels it is important to quote the salient points of the evidence in relation to the notification procedure followed in that particular event:



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“Dr. Dalli: Mr. Dixon can you explain what happened on the day?”

Scott Dixon: Ok I just finished my fight. I boxed with Mr. Schembri for the Maltese Middle-Weight title and after the fight I went back to the dressing room with my fans and my entourage. About 10 minutes later a man comes through the crowd and tells me “Dope test”. I said “Sorry?”. He said “dope test”.

Dr. Dalli: Who was the man who told you “dope test”?

Scott Dixon: Ignatius Zammit.

Dr. Dalli: When he came up to you did he identify himself?

Scott Dixon: I asked him from where he is from or represent. He had a badge. He took his badge out and said that he is from the local council.

Dr. Dalli: He said Council?

Scott Dixon: I believe yes. Anyway I declined.

Dr. Dalli: Why did you decline?

Scott Dixon: Because the procedure was broken.

Dr. Dalli. Ok. Why? How?

Scott Dixon: Because I have been a professional for 23 years. I’ve had over 28 dope tests and always the athlete is notified before a fight subject to testing. I’d say and go to the day before the fight and they say “Mr. Dixon you’ve been subject to testing by Wada or what the association is. Do you accept the test?”. Then what they explain to you when you leave the ring. Two persons will be waiting for you when you in the corner. They will escort you to the dressing room and obviously carry out the test.

Dr. Dalli: In the 28 doping test that you’ve done, were you always escorted from the ring?

Scott Dixon: Yes always.

Dr. Chris Dalli: Where did you get the 28 doping test done? You mentioned 22 years of testing.

Scott Dixon: 23 years. I said right about 28 doping tests. Basically procedure was broken so I declined.

Dr. Veronique Dalli: So at the time you declined cause you said that the procedure was broken mainly for two reasons: because you were not escorted from the ring and secondly you were not notified and you did not... you were handed the papers, so to speak, after the match.

Scott Dixon: No papers were handed.

Dr. Veronique Dalli: So where do you sign your acknowledgment to testing?

Scott Dixon: Before but usually the procedure is before the fight you would sign. At the weigh in, the day before. So Mr. Zammit never showed me any documentation.

Dr. Veronique Dalli: So you sign the consent form the moment you are notified. Yes?

Scott Dixon: Yes.

Dr. Veronique Dalli: Did Zammit ask you to sign the consent form?

Scott Dixon: No

Dr. Veronique Dalli: What did he ask for?

Scott Dixon: Just told me that I had to do the dope test.

Dr. Veronique Dalli: Did he hand you any documents to sign?

Scott Dixon: No nothing. He just showed the badge which was tucked in in his left pocket. And he was alone.

Chairperson: Did you meet Ignatius Zammit in previous testing?

Scott Dixon: Yes. At the show before.

Chairperson: So did you know what his role?

Scott Dixon: Obviously because I know.

Chairperson: Obviously is a yes?

Scott Dixon: I heard them say that they tested me at Ta Qali. But I don't recall.

Chairperson: You don't recall?

Scott Dixon: No. But the procedure was different then. Totally.

Chairperson: Did you have an idea of him from previous testing?

Scott Dixon: No.

Chairperson: So did you recognize him when he came up to you?

Scott Dixon: No.

Chairperson: Did he show you the card?

Scott Dixon: Yes he showed me the card.

Dr. Veronique Dalli: Did he show you the card or showed you where his card was?

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Scott Dixon: It was tucked in his top pocket.

Chairperson: I think he answered, Dr. Dalli.

Dr. Veronique Dalli: Did he show you where the card was?

Scott Dixon: I told him why is your card tucked in your top pocket to identify yourself."

N.B. The emphasize on parts of the transcribed evidence is being added by the Panel.

c) Charles Muscat, amateurs' coach tao-boxing at the Dixon's Gym gave evidence under oath and he stated that he overheard the conversation between Scott Dixon and Ignatius Zammit although he also testified that he was not near Scott Dixon at all times but went up to Scott Dixon after he saw that Ignatius Zammit was talking to Scott Dixon and Dixon had refused to do the doping tests. He claims that at no time did he see Ignatius Zammit with the badge.

d) Dr Mark Xuereb, Psychiatrist involved in boxing gave evidence under oath about his experience with the Scott Dixon, Boxing associations and doping test but was not present on the day of the incident.

e) Casey Pace, partner of Scott Dixon and person present on the day of the attempted testing gave evidence under oath and stated that *"Then the judge came actually to talk to us and advised us to go and look at the results cause for sure there was a mix up or something. Scott said like ok to judge. He was British. Then Ignatius came in the room. My mum was there, Scott's mum was there. He had a bottle of water in his hand he just done like this "Dope Test". We were like "who are you?". I was the one actually who asked him. He told me my name is Ignatius Zammit and I'm from Wada I think he said. Then Scott asked him for the badge which it was in his pocket and he just said here is the badge. But we never saw the badge. Like he didn't take it out or something "listen this is the badge"* Furthermore Ms Pace also stated that Mr Marc James (C.E.O the Malta Boxing Association) stopped Scott Dixon neat the ring side, near the VIP table, just before they left the premises and asked him about the doping test amd *"Scott just told him leave me alone."* When Ms Pace was asked by the Chairperson: *"Ok so even Mr. Marc James asked him for the dope test later on near the ring and Mr. Dixon refused."*, she confirmed that *"He just said leave me alone."*. The Chairperson asks again Ms Pace *"ok so he refused?"* and Ms Pace's reply is *"yes."*

2.3 The Panel took note of the evidence produced and the final written and oral submissions of the parties' legal representatives.

3. Considerations:

3.1 From the evidence brought before the Panel it transpires that the athlete does not deny the fact that he was notified to submit himself for a doping test but his objection is based on the fact that the procedure adopted by the NADO representatives is not in conformity with the rules and procedures for doping test. Primarily the defence council has submitted that the procedure followed for notification was incorrect and that when Ignatius Zammit asked Scott Dixon to submit a urine sample for doping test he did not identify himself and his role. Moreover, the defence council has argued that this has created suspicion in Scott Dixon who then refuse to do the doping test.

3.2 The perm of this case is based on proof and therefore the Panel deems it appropriate to delve into the issue of the Burden of Proof whereby the National Anti-Doping Organization is to establish *"to the comfortable satisfaction of the hearing body, bearing in mind the seriousness of the allegation which is made."* (Article 3.1 of the WADC) an anti-doping rule violation. The comfortable satisfaction standard is always higher than a balance of probabilities but less than proof beyond a



reasonable doubt and the degree of comfort may vary according to the seriousness of the allegations.

3.3 The Panel rests on the WADC above-stated regulation on Burden of Proof and opines that in order to deem the athlete guilty of the alleged violation it must be comfortably satisfied that the occurrence of the alleged fact took place, in this case referring to "*Evading sample collection, or without compelling justification, refusing or failing to submit to sample collection after notification as authorised in these regulations: Provided that, 'evading sample collection' shall also be achieved if it is established that an athlete was deliberately avoiding a doping control official to evade notification or testing;*". This violation does not only punish the act of refusing to submit to a doping test when notified to do so but also *deliberately avoiding* the notification from the doping control officers.

3.4 Furthermore, the Panel deems it proper to delve into the procedure for the notification of athletes which is based on the WADC International Standards Testing and Investigations, Article 5 - Notification of Athletes and in particular the following:

5.3.1 Save in exceptional and justifiable circumstances, No Advance Notice Testing shall be the method for Sample collection.

[Comment to 5.3.1: It is not justifiable for a National Federation or other body to insist that it be given advance notice of Testing of Athletes under its jurisdiction so that it can have a representative present at such Testing.]

5.3.5 The Sample Collection Authority, DCO or Chaperone, as applicable, shall establish the location of the selected Athlete and plan the approach and timing of notification, taking into consideration the specific circumstances of the sport/Competition/training session/etc. and the situation in question.

5.4.2 When contact is made, the DCO/Chaperone shall:

- a) From the time of such contact until the Athlete leaves the Doping Control Station at the end of his/her Sample Collection Session, keep the Athlete under observation at all times;***
- b) Identify themselves to the Athlete using the documentation referred to in Article 5.3.3; and***
- c) Confirm the Athlete's identity as per the criteria established in Article 5.3.4. Confirmation of the Athlete's identity by any other method, or failure to confirm the identity of the Athlete, shall be documented and reported to the Testing Authority. In cases where the Athlete's identity cannot be confirmed as per the criteria established in Article 5.3.4, the Testing Authority shall decide whether it is appropriate to follow up in accordance with Annex A – Investigating a Possible Failure to Comply.***

5.3.3 Sample Collection Personnel shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorisation letter from the Testing Authority. DCOs shall also carry complementary identification which includes their name and photograph (i.e., identification card from the Sample Collection Authority, driver's licence, health card, passport or similar valid identification) and the expiry date of the identification.

3.5 The Panel will firstly deal with the issue raised by the defence council on the notification procedure. During the evidence brought before the Panel Scott Dixon confirmed that there is "no dispute that Mr Dixon declined the test" but the reason for his "No" was that the procedure for notification was not respected. The athlete claimed that he was not given any notice of the possibility of doping test prior to the bout but he was notified after the bout when he got to the dressing line. At that stage he had just lost the bout and there was some commotion amongst his entourage in the dressing room because as witnessed by Charles Muscat and Casey Pace during the sitting there was a feeling amongst the supporters of Dixon that the final result was unjust. The witnesses confirmed that Dixon was very upset with the result and when Ignatius Zammit came up to him in



the dressing room, there was some confusion and commotion amongst the various persons present in the dressing room. Dixon and both witnesses confirmed that Ignatius Zammit notified Dixon to submit for doping control but they were suspicious about this request. It is unclear whether Dixon did recognise or not Ignatius Zammit because when asked Dixon at first confirmed that he knew him from a past experience of doping test but then he denies recognising him (see Dixon's testimony quoted above). Furthermore, based on the evidence brought before the Panel and the ISTI, in particular Articles 5.3.1 and 5.3.5, the Panel confirms that there was no breach in the procedure of notification followed by the Sample Collection Authority and that Zammit correctly notified the athlete after the competition. Such procedure was in no way in breach of the procedure for the Notification of the Athlete.

3.6 The Panel will now delve into the issues raised by the defence counsel in respect of the identification of the Ignatius Zammit. During the sitting, Ignatius Zammit explained the procedure followed but at no time the defence counsel asked whether he had showed any identification card to the athlete. However, Ignatius Zammit stated that he did inform Scott Dixon about his details and role and this was confirmed by Scott Dixon himself, Charles Muscat and Casey Pace. Mr Zammit explains in detail the procedure followed but at no instance did the defence counsel ask Ignatius Zammit whether he had showed him the card or not. This was raised only at a later stage when Scott Dixon and other witnesses brought up by the athlete testified. However, such testimony is in no way clear to the Panel because in more than one instance Dixon in his testimony confirms that Zammit did show him the badge. "*Scott Dixon: No nothing. He just showed the badge which was tucked in in his left pocket. And he was alone; Chairperson: Did he show you the card? Scott Dixon: Yes he showed me the card.*" (the relevant parts have been emphasized in Part 2.1 (b) of this decision). Here the Panel has reason to believe that Ignatius Zammit did show him the tag and did identify himself with the athlete.

3.7 Having considered all the evidence produced, the Panel is convinced and is comfortably satisfied that on the 12th of March, 2016 Scott Dixon was duly and correctly notified by the doping control officers to submit to sample collection for a doping test and the athlete's conduct does result into an intentional conduct to evade sample collection.

3.8 On a final note, the Panel, after taking into consideration that due to circumstances independent from the athlete the case was heard more than 10 months from the date of the violation and taking also into consideration that it has been brought to the attention of the Panel that on the 11th of June, 2016 the athlete took part on an unlicensed show promoted by the Malta Boxing Commission notwithstanding a temporary suspension imposed by the Malta Boxing Association, the Panel is of the opinion that both instances should be reflected in the part of the decision imposing a period of suspension on the athlete.

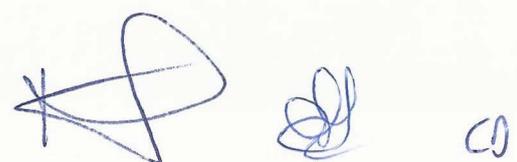
4. Decision

Therefore on the basis of the above considerations, the National Anti-Doping Disciplinary Panel rules that:

4.1 Scott Dixon has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(c)] and WADA Code (Art. 2.3) by evading sample collection on the 12th March, 2016.

4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11 (3) (a) of the Anti Doping Regulations, 2015 and Art. 10.3.1 of the WADA Code is imposing on the athlete Scott Dixon a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of the provisional suspension dated 14th March, 2016.

4.3 A copy of this decision is to be forwarded to the Malta Boxing Association.

The bottom right corner of the page contains three handwritten marks in blue ink. On the left is a large, stylized signature that appears to be 'S. Dixon'. To its right is a smaller, more compact signature. Further to the right are the initials 'CD'.



Dr. Maria Azzopardi
Chairperson



Dr. Chris Dalli
Member



Mark Zammit
Member

This 17th day of February, 2017.