

1976 October 20

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

ATHANASSIOS STYLIANOU ATHANASSIOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 3755*).

5 *Military offences—Sentence—Desertion—Two months' imprisonment—Appellant suffering from severe psychological disturbances—Offences attributed to said affliction—Wrong in principle to send to prison a person such as the appellant—Proper course imposition of suspended sentence—Which could not be resorted to because appellant had already spent in prison three weeks out of his sentence—Sentence reduced to one of three weeks.*

10 *Suspended sentence of imprisonment—Though a proper course not resorted to because appellant had already spent in prison part of the sentence.*

15 The appellant appealed against a sentence of two months' imprisonment which was passed upon him by a military Court for offences of desertion from the National Guard. It was undisputed that he had been discharged for a period of six months, from the ranks of the National Guard, because he had been found by a medical board to be suffering from severe psychological disturbances, due to his immature personality.

20 *Held*, (1) the offences in respect of which he was sent to prison are most probably attributable to the said psychological affliction and, consequently, we think that it was wrong in principle to send to prison a person such as the appellant.

25 (2) the appropriate course was the imposition of a suspended sentence of imprisonment; but as we cannot resort to such a course now, because, the appellant has already spent in prison three weeks out of his sentence of two months, we have decided to set aside the said sentence of imprisonment and,

· even though we would not have imposed a sentence of imprisonment had we been the trial Court, reduce the sentence passed on appellant to one for three weeks, so that he may be released at once.

Appeal allowed. 5

Appeal against sentence.

Appeal against sentence by Athanassios Stylianou Athanassiou who was convicted on the 30th September, 1976, at the Military Court sitting at Nicosia (Case No. 365/76) on one count of the offence of desertion contrary to section 29 (1) (a) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and sentenced to two months' imprisonment. 10

D. Demetriades, for the appellant.

S. Tamassios, for the respondent.

The judgment of the Court was delivered by: 15

TRIANTAFYLLIDES P.: The appellant was sentenced, by a military Court, to two months' imprisonment, on September 30, 1976, for the offence of desertion from the National Guard, contrary to section 29 (1) (a) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64). When sentence was passed upon him there were taken into consideration, at his own request, a number of other similar offences of desertion, as well as an offence of having abandoned his post. 20

It is an undisputed fact, established by an official document which is before us, that the appellant had been discharged, temporarily, for a period of six months, from the ranks of the National Guard, in which he has been serving since July 23, 1973, because he had been found, by a medical board, to be suffering from severe psychological disturbances, due to his immature personality. In the circumstances, we are led irresistibly to the conclusion that the offences in respect of which he was sent to prison are most probably attributable to the said psychological affliction and, consequently, we think that it was wrong in principle to send to prison a person such as the appellant. 25 30 35

Counsel for the respondent has submitted, quite fairly, that the sentence of imprisonment could have been imposed on the appellant, by the trial Court, as a suspended sentence of im-

prisonment. We agree that this would have been the appropriate course at the stage when the appellant was about to be sentenced; but, in our opinion, we cannot resort to such a course now, because, in the meantime, the appellant has already
5 spent in prison three weeks out of his sentence of two months. We, therefore, have decided to set aside the said sentence of imprisonment and, even though we ourselves would not have imposed, had we been the trial Court, a sentence of imprisonment, we think that the only course open to us now is to reduce
10 the sentence passed upon the appellant to one of imprisonment for three weeks, so that he may be released at once.

It is, of course, hardly necessary for us to observe that had the appellant not been suffering from the severe psychological disturbances which apparently made him commit the offences
15 in question, we would not have interfered, in any way, with the sentence imposed by the military Court, which was otherwise a quite lenient one indeed.

In the result this appeal is allowed as already indicated in this judgment.

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Appeal allowed.