

1976 November 22

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

COSTAKIS GEORGHIOU FOULIAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3762*).

Criminal Law—Sentence—Disparity of sentences as a ground of appeal—Principles applicable—Nine months' imprisonment for conspiring to defraud the public—Sentence of binding over and suspended sentence of imprisonment on co-accused—And sentence of binding over in another case for the same offence—Though sentence a proper one, this is an exceptional situation of really grave disparity of sentences—Sentence reduced. 5

The appellant was sentenced to nine months' imprisonment upon his plea of guilty to the offence of conspiring to defraud. A co-accused of the appellant was bound over in the sum of £150 to come up for judgment within three years and in another case the same sentence of binding over was imposed for the same offence. Another co-accused of the appellant was sentenced, at the same time as the appellant, to nine months' imprisonment, but by way of a suspended sentence of imprisonment. There was not much difference between the degree of culpability of the appellant and of this co-accused. 10 15

Upon appeal the appellant mainly contended that there existed a disparity of his sentence as compared with the sentence passed upon his co-accused as well as the sentences passed upon other persons convicted of the same offence. 20

Held, allowing the appeal, (1) the essential prerequisite of reducing, on the ground of disparity, an otherwise proper sentence, is the existence of such an exceptional situation as would leave the more severely punished appellant 25

with a strong sense of grievance towards the administration of justice if his sentence is not reduced (see *Iacovou and Another v. Republic* (1977) 9-10 J.S.C. 1554)

5 (2) Though we regard the sentence passed upon this appellant as a proper one, we are faced with an exceptional situation of really grave disparity of sentences and in order to remove a justified sense of grievance from this appellant we have decided, in the interests of justice, not without quite some difficulty, to reduce the sentence passed upon him to one of six months' imprisonment.

10 *Appeal allowed.*

Cases referred to:

Iacovou and Another v. The Republic (1977) 9-10 J.S.C. 1554
(to be reported in (1976) 2 C.L.R.);

15 *R. v. Coe*, 53 Cr. App. R. 66;

Nicolaou v. The Police (1969) 2 C.L.R. 120.

Appeal against sentence.

20 Appeal against sentence by Costakis Georghiou Foullas who was convicted on the 20th October, 1976, at the District Court of Nicosia (Criminal Case No. 17076/76) on one count of the offence of conspiring to defraud, contrary to section 302 of the Criminal Code, Cap. 154 and was sentenced by Poyiadjis, S.D.J. to nine months' imprisonment.

D. Papachrysostomou, for the appellant.

25 *A. M. Angelides*, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by:

30 TRIANTAFYLIDIS P.: The appellant was sentenced to nine months' imprisonment after he was convicted, on his own plea, of the offence of conspiring to defraud, which he has committed by conspiring with other persons to defraud the public by administering drugs to race-horses.

35 The appellant has appealed against the above sentence mainly on the ground that there exists such a disparity of his sentence as compared with the sentences passed upon his co-accused in the same case, as well as the sentences passed upon other persons convicted of the same offence in another case-which was in-

stituted partly as a result of revelations which the appellant made to the police—that we have to interfere with the sentence imposed on him in order to reduce it.

It is correct that a co-accused of the appellant was merely bound over in the sum of C£150 to come up for judgment within three years, and the Judge who imposed such sentence in the present case referred expressly to another case (No. 17643/76 in the District Court of Nicosia) in which for the same offence he had imposed, again, the same sentence of binding over to come up for judgment, and stated that he was imposing on the co-accused of the appellant a sentence of binding over because such a sentence had been imposed in that other case.

Another co-accused of the appellant was sentenced, at the same time as the appellant, to nine months' imprisonment, but only by way of a suspended sentence of imprisonment; and we should say that we do fail to find much difference between the degrees of culpability of the appellant and of that co-accused.

It is to be noted that the co-accused of the appellant and those who were bound over in the other case were dealt with by a different District Judge, whereas the appellant was sentenced by another District Judge; but, of course, this is not a consideration which we can take into account, since the administration of justice is impersonal.

To what extent disparity of sentences can be a ground for *interfering on appeal with a sentence* is a matter which has been examined by this Court in *Iacovou and Another v. The Republic* (Criminal Appeals Nos. 3677-78, not reported yet*); in the judgment delivered in that case reference has been made to what is stated, in this respect, by Thomas in his textbook on Principles of Sentencing (at pp. 69-70), to *R. v. Coe*, 53 Cr. App. R. 66, and *Nicolaou v. The Police*, (1969) 2 C.L.R. 120.

The essential prerequisite of reducing, on such a ground, an otherwise proper on the face of it sentence, is the existence of such an exceptional situation as would leave the more severely punished appellant with a strong sense of grievance towards the administration of justice if his sentence is not reduced.

* See now (1977) 9-10 J.S.C. 1554, to be reported in (1976) 2 C.L.R.

We regard the sentence passed upon this appellant as a proper one; actually, we would not have been prepared to interfere with it even if it had been still more severe, because we consider that the crime which he has committed needs
5 appropriately heavy punishment if it is going to be eradicated; and, in this respect, we agree with the trial Judge that it can be judicially noticed that it is a crime which is prevalent and, therefore, deterrent sentences are justified. On the other hand,
10 we are, most certainly, faced here with an exceptional situation of really grave disparity of sentences and in order to remove a justified sense of grievance from this appellant we have decided, in the interests of justice, though not without quite some difficulty, to reduce the sentence passed upon him to one of six months' imprisonment.

15

Appeal allowed.