1977 March 9

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

ANASTASIS PANAYI MANTIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3776).

Criminal Law—Sentence—Persistent offender and hardened criminal—Credit given for his belated endeavour to go straight for the sake of his family—Sentence of twelve months' imprisonment for stealing reduced to one of six months.

Criminal Procedure—Practice—Appeal against conviction filed by appellant from prison without legal advice—Treated as an appeal both against conviction and sentence.

The appellant was found guilty of the offence of stealing the amount of C£ 70, which he possessed as bailee, and was sentenced to twelve months' imprisonment. He filed his appeal from prison, without the assistance of Counsel and the sole ground of appeal which he set out in the notice of appeal was " I am innocent".

As the verdict of the trial Court was based on its finding as regards the credibility of the complainant and of the appellant, the Court of appeal saw no reason to disturb this finding and dismissed the appeal against conviction. The Court of Appeal, however, acting in accordance with its practice of treating, in appropriate cases, an appeal of this kind, made by a prisoner on his own without legal advice, as an appeal both against conviction and sentence decided to adopt this course in the present case.

The facts relevant to the sentence were the following:

The appellant was a labourer, forty-five years old, he was married and the father of five children. He was a person with

a terribly bad criminal record; he had one hundred and eleven previous convictions, most of them for offences of stealing and housebreaking, and he has been in prison for various terms of imprisonment; for even up to five years on more than one occasion.

It was an indisputable fact that whereas in the past the appellant was being convicted almost every year, sometimes more than once every year, of offences of dishonesty, he has kept out of trouble for the last few years. And during the hearing of his appeal the appellant put forward a passionate plea for a last chance to be given to him in order to try to mend his ways; and he has pointed out that since his last conviction, in 1969, for housebreaking, when he was sentenced to five years' imprisonment, he has been doing his best to go straight in order to stay out of prison and be able to work in order to support his family.

Held, that bearing in mind the well established principle that in assessing sentence credit for recently going straight should be given to a person with a past burdened with previous convictions (See Cross on The English Sentencing System, 2nd ed., pp. 168, 169, Thomas on the Principles Sentencing, pp. 179–182 and *R.* v. *Kenworthy*, 53 Cr. App. R. 311 at pp. 312–314); that the appellant found himself in great temptation when he was entrusted with the money of the complainant; that the appellant, a hardened criminal, would not really benefit much, by way of reform, by remaining in prison for the full term of imprisonment of twelve months; that even a person such as the appellant does deserve to be given credit for his belated in life endeavour to go straight for the sake of his family; and that as this Court should not discourage, but indeed encourage him, to keep trying to do so, it has been decided to take a calculated risk and to reduce his sentence to one of six months' imprisonment.

Appeal partly allowed.

Cases referred to:

Chrysostomou v. *The Police* (1972) 2 C.L.R. 23;

Mousoulides v. *The Police* (1973) 2 C.L.R. 1;

Director of Public Prosecutions v. *Ottewell* [1970] A.C. 642 at p. 650;

R. v. *Kenworthy*, 53 Cr. App. R. 311 at pp. 312–314.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Anastasis Panayi Mantis who was convicted on the 29th December, 1976 at the District Court of Larnaca (Criminal Case No. 4249/76) on one count of the offence of stealing contrary to sections 255 and 266 of the Criminal Code, Cap. 154 and was sentenced by Artemis, D.J. to twelve months' imprisonment.

Appellant appeared in person.

N. Charalambous, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES P.: The appellant was found guilty by the District Court of Larnaca of the offence of stealing the amount of C£70, which he possessed as bailee, and he was sentenced to twelve months' imprisonment.

According to the evidence of the complainant, which was accepted by the trial judge, the appellant—who is a hawker—the complainant and other persons were playing "zari", which is an unlawful game of chance, when the police raided the place and confiscated money being used by the assembled there gamblers; the police asked, then, all of them to go to the police station, but allowed the appellant to take, first, home a wheel-barrow which he was using as a hawker. The complainant had on him, at the time, seventeen C£5 notes, and fearing that they might be confiscated by the police, asked the appellant to take this money away with him and hand it back to him later; as a result of this arrangement the appellant placed the bundle of the said notes in a large bottle on his wheel-barrow which contained a rabbit preserved in vinegar; and when the complainant observed that the notes would be destroyed by the vinegar the appellant removed them and placed them somewhere else on his wheel-barrow.

Later, the appellant handed back to the complainant only three out of the seventeen C£5 notes, denying that he had received any more money from the complainant; so, eventually, the complainant went to the police and reported the matter, with the result that the house of the appellant was searched and there were found fourteen C£5 notes; they were hidden in a box buried in the yard of the house of the appellant, who,

after having been duly cautioned by the police, said "all right". Later on he gave a statement to the police confessing the offence, but, very fairly, the trial judge refused to rely on it as evidence against the appellant because at the trial, where the appellant defended himself in person, he suggested in cross-examination that he had been induced to confess by promises given to him by the police.

The trial Court believed the evidence of the complainant and disbelieved the evidence of the appellant, who denied at the trial that he had received more than C£15 from the complainant and said that the amount of C£70, which was found at his house, was not money belonging to the complainant.

The verdict of the trial Court was based on its finding as regards the credibility of the complainant and of the appellant and we see no reason to disturb this finding, especially as it appears from the evidence adduced at the trial that, even before the remaining fourteen C£5 notes were unearthed in the yard of the house of the appellant, the complainant was insisting that he had not entrusted to the appellant only the three C£5 notes, which the appellant returned to him, but seventeen C£5 notes.

Consequently the appeal of the appellant against his conviction has to be dismissed.

The appellant filed this appeal from prison, without the assistance of counsel, and has appeared before us and conducted his case in person, without being legally represented.

The sole ground of appeal which he set out in the notice of appeal was "ειμαι άθῶος" ("I am innocent").

It has been the practice of this Court to treat, in appropriate cases, an appeal of this kind, made by a prisoner on his own without legal advice, as an appeal both against conviction and sentence (see, *inter alia*, *Chrysostomou* v. *The Police*, (1972) 2 C.L.R. 23 and *Mousoulides* v. *The Police*, (1973) 2 C.L.R. 1).

We intend to adopt this course in the present case, because we think that in the interests of justice we should interfere with the sentence passed upon the appellant by the trial Court:

The appellant is described in the charge as a labourer, forty-

five years old, he is married and the father of five children. He is a person with a terribly bad criminal record; he has one hundred and eleven previous convictions, most of them for offences of stealing and housebreaking, and he has been in prison for various terms of imprisonment; for even up to five years on more than one occasion.

During the hearing of this appeal he put forward a passionate plea for a last chance to be given to him in order to try to mend his ways; and he has pointed out that since his last conviction, in 1969, for housebreaking, when he was sentenced to five years' imprisonment, he has been doing his best to go straight in order to stay out of prison and be able to work in order to support his family.

It is true that he has not been convicted since he has come out of prison except, on one occasion, in 1974, for a really minor offence for which he was fined only C£10.

Thus, it is an indisputable fact that whereas in the past the appellant was being convicted almost every year, sometimes more than once every year, of offences of dishonesty, he has kept out of trouble for the last few years.

It is a well settled principle of law that when an offender is punished for a particular offence he is not being punished all over again for past crimes; but, on the other hand, a judge in assessing sentence as regards a persistent offender is entitled to increase the sentence he would have otherwise imposed if he had not before him such an offender (see, *inter alia, Director of Public Prosecutions* v. *Ottewell*, [1970] A.C. 642, 650 and Cross on The English Sentencing System, 2nd ed., pp. 165, 166). It is, also, equally well established that in assessing sentence credit for recently going straight should be given to a person with a past burdened with previous convictions (see Cross, *supra*, pp. 168, 169, and Thomas on the Principles of Sentencing, pp. 179–182).

It is useful to refer, in this respect, to *R.* v. *Kenworthy*, 53 Cr. App. R. 311, where a sentence of seven years' imprisonment for larceny in a dwelling-house and obtaining money by false pretences was set aside and an order of probation was made instead, because of recent efforts of the appellant to

lead an honest and industrious life; Fenton Atkinson L.J. said the following (at pp. 312-314):-

" It is clear from the sentence passed, of course, that he must have had a very bad record indeed, and that indeed is the case. He is a man of fifty-six, he comes from Yorkshire, and he has some fourteen previous convictions going back to 1941, all for offences of dishonesty. Without going through the whole list, it starts off with a number of offences of false pretences and obtaining credit by fraud, and by December of 1950 the sentences had gone up to three years' imprisonment. There were more false pretences in 1953, and then in 1954 he became a housebreaker. At East Riding Quarter Sessions (his native county) for housebreaking with fifty-five cases considered he got five years' imprisonment; and shortly after his release from that sentence for larceny in a dwelling-house, larceny of a Post Office Savings Bank Book and a number of cases considered he got four years' imprisonment. That was in 1958. Then—and this is perhaps one of the difficulties about the course we are in fact proposing to take—in January 1962 at West Sussex Quarter Sessions for housebreaking he was given a chance. He must then have been about nearly fifty years of age, the court decided to give him a chance, and he was put on probation for two years. That failed lamentably, because by August of that same year at Buckinghamshire Quarter Sessions for burglary, larceny, false pretences and thirty-seven cases considered he got further terms of imprisonment totalling four years. Again in 1966 for offences of housebreaking at Hampshire Quarter Sessions he got one year's imprisonment consecutive to the sentences he was then serving. It is not quite clear from the police officer's evidence but Mr. Valios says (and we accept it) that he came out in January 1967, and that brings us to the first and really only encouraging feature so far as his future is concerned.

It is quite clear that since then he has worked well. He held one job for a substantial length of time, but he had to give it up for a period because he was ill with some chest trouble and was apparently worried because he might have cancer—but I gather that fear has been dispelled—and it is quite clear that possibly for the first time for

many years he made a really genuine effort to keep out of trouble and to work honestly and well; and there are letters on the file from two employers saying he did indeed work well and satisfactorily for them. The learned Recorder was not impressed by these efforts, he thought he had given up a little too easily when he was in anxiety and fear about his health; and he regarded this as a case for an extended sentence to put this man out of the field of future crime for a long period, namely, seven years. The Court would like to make two points on that. Although on his previous record this appellant no doubt qualified for an extended sentence, in our view it is right when considering whether to impose a sentence of this kind to consider the actual offence or offences of which he has now been convicted; and these were comparatively trivial offences to attract such heavy sentences as seven years' imprisonment. Further—and this was a point which was often made in cases where preventive detention was under consideration—one of the pointers against preventive detention always was that for a year or more the man concerned had shown a real intention to work and to stick to work and keep out of trouble, as this appellant had done. Our view is that the sentence of seven years is too long, that it cannot possibly stand, and that this is a case where the Court could afford to take a calculated risk of giving Kenworthy another chance on probation."

As Cross, *supra*, has put it "the Courts give credit for what they take to be honest endeavour so as to make their sentencing practice reflect the ordinary notion that it is desirable to reward people for trying to be good".

With the foregoing in mind and taking the view that the appellant apparently found himself in great temptation when he was entrusted with the money of the complainant and, furthermore, that the appellant, who is a hardened criminal, would not really benefit much, by way of reform, by remaining in prison for the full term of imprisonment of twelve months, to which he was sentenced by the trial Court, while, on the other hand, even a person such as he does deserve to be given credit for his belated in life endeavour to go straight for the sake of his family, and that we should not discourage, but indeed encourage him, to keep trying to do so. we have decided

to take a calculated risk and to reduce his sentence to one of six months' imprisonment; this is, in our opinion, sufficient to punish the crime which he has committed on this occasion and, on the other hand, will not keep him in prison for too long to the detriment of his family and of his newly found will to try to become law-abiding. If he does not make good use of this last chance which we give him then he will have only himself to blame in future.

This appeal is, therefore, allowed in part as aforesaid.

Appeal partly allowed.