1963
May 9

ROBERT LEVON YENOVKIAN v. THE REPUBLIC

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

ROBERT LEVON YENOVKIAN,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 2440)

Criminal Law—Young Offenders—Sentence—Reformation and rehabilitation—Psychiatric treatment—But when every effort to that effect proved of no avail the Court must pass sentence.

Criminal Law—Sentence upon conviction of any offence not punishable with death—Powers of the High Court on appeal in such cases—Powers under the combined effect of section 33 *of the Criminal Code, Cap.* 154 *and section* 25 (3) *of the Courts of Justice Law,* 1960 (*Law of the Republic No.* 14 *of* 1960)*—To discharge the appellant from custody on condition to come up for judgment before the High Court when called upon at any time within a period fixed for psychiatric treatment and on certain other conditions.*

Section 33 of the Criminal Code, Cap. 154 reads :

" When a person is convicted of any offence not punishable with death the Court may, instead of passing sentence, discharge the offender upon his entering into his own recognizance, with or without sureties, in such sum as the Court may think fit, conditional that he shall appear and receive judgment at some future sitting of the Court or when called upon."

By section 25 (3) of the Courts of Justice Law, 1960 (*supra*) it is provided :

" (3) Notwithstanding anything contained in the Criminal Procedure Law or in any other Law or in any Rules of Court and in addition to any powers conferred thereby the High Court on hearing and determining any appeal either in a civil or a criminal case shall . and may give any judgment or make any order which the circumstances of the case may justify ."

The appellant, a young person, was convicted and sentenced to three years' imprisonment on charges of making false documents contrary to sections 331, 333 (*d*) (i) and 336 of the Criminal Code, Cap. 154. He appealed against that sentence.

Appeal against sentence.

The appellant was convicted on the 9th October, 1961, at the Assize Court of Famagusta (Criminal Case No. 2700/61)

on 6 counts of various offences of making a false document contrary to ss. 331, 333 (*d*) (i) and 336, of the Criminal Code Cap. 154 and was sentenced by Attalides, P.D.C., Loizou and Orphanides D.J.J. to three years' imprisonment on each count, the sentences to run concurrently.

Appeal dismissed.

A. Triantafyllides for the appellant.

S. Georghiades for the respondent.

The facts sufficiently appear in the judgment of the Court, delivered by :

WILSON, P. : The appellant comes before us to-day for judgment.

On December 15th, 1961, the Court, in its judgment of that day, acting in pursuance of powers granted to it by the combined effects of section 33 of the Criminal Code and of section 25 (3) of the Courts of Justice Law, discharged the appellant from custody on the condition that he would come up for judgment when called upon at any time within the period of psychiatric treatment in Switzerland, which was later undertaken unsuccessfully, and in any event upon termination of the treatment period. The Court made the order on the undertaking that he would return to Cyprus and present himself to the Court for judgment.

Pursuant to that decision a recognizance was entered into on December 21st, 1961, the condition of which was that if the appellant should come up for judgment when called upon within the period of three years from its date, and in any case upon termination of this treatment in Switzerland, the recognizance would be void ; but otherwise it would remain in full force.

After the appellant returned from Switzerland a further plan was entered into which involved permitting him to go to Beirut to obtain further education. While in that city and very soon after his arrival there he committed an offence for which he was sentenced to five months' imprisonment ending on January 8th, 1963. Upon his release he returned to Cyprus and has been here since that time. The delay in bringing this case before the Court again has been due to the fact that efforts to obtain a transcript of the evidence and the proceedings in Beirut have been unsuccessful.

However, it is deemed necessary now to dispose of this case, and we think we can do so without this information

because we have been informed of the nature of the offence in respect of which he was sentenced and has served the penalty.

The course of action taken by this Court has not been extended to the appellant because his parents were able to afford a treatment, but from the desire to assist, if possible, in helping him to overcome what appears to be a particular problem with him. This effort has cost his parents, not only a great deal of anxiety but also a great deal of money.

The object sought to be served was that if the appellant could be assisted over his difficulty, he would become—it was hoped—a good citizen, and the country would be saved the expense of keeping him in custody while he was serving his term. There would be a general gain to the society by treating this case in such a manner.

This approach of this Court is not new. We are interested in reformation and in rehabilitation, if that appears to be possible. We have taken, what appeared to be appropriate, action in other cases without regard to social position or financial status of the person in trouble.

However, there comes a time when such efforts have to be brought to an end. We feel that every reasonable effort has been made in this case and the time has now come when the Court, in the discharge of its responsibility, must pass sentence. This young man has been apparently hard to handle ; he is now 19 years of age ; his first difficulties appeared when he was, I think, 15 years of age, and it is most unfortunate that he has got into trouble. However, he is now old enough to realise that unless he wishes to spend the rest of his life in custody—which he would probably not enjoy—he must cease unlawful activities. He has already had a taste of custody which was apparently not very pleasant. None of it is. But imprisonment seems to be the only effective means of protecting the society in many cases.

The only course that the Court now has is to impose on this young man imprisonment ; and we feel that the term originally imposed in this case, namely three years is the proper penalty. We sentence him to that imprisonment.

The sentence will run from now. He had his opportunity to reform but did not and he must serve his penalty.

Appeal dismissed. Sentence of three years' imprisonment imposed to run from this day.