

NICOS TIMOTHEOU,

Appellant,

v.

THE POLICE,

Respondents.

NICOS
TIMOTHEOU
v.
THE POLICE

(*Criminal Appeal No. 2751*)

Criminal Law—Sentence—Excessive sentence—Trial Judge in imposing sentence improperly influenced by a previous case in which same accused was bound over—Not open to Judge to pass a higher sentence of imprisonment because he thought he was misled in a previous case and treated accused leniently—Otherwise this would amount to revision of sentence passed by the same Judge.

The appellant was convicted of the offence of stealing a wrist watch valued at £10, contrary to section 262 of the Criminal Code, Cap. 154, and was sentenced to one year's imprisonment.

He appealed against sentence mainly on the ground that the Court in passing sentence was erroneously influenced by the conviction of the appellant, in another case and erroneously took into consideration the facts thereof, though such case could not have been treated as a previous conviction inasmuch as it related to an offence committed by appellant on the 20.8.64 whereas in the present case the offence was committed between the 1st and the 30th June 1964.

Held, (1) it was not open to the learned judge to pass a higher sentence of imprisonment because he thought he was misled in a previous case by misrepresentations and treated the appellant very leniently. Otherwise this would amount to a revision of a sentence passed by the same judge.

(2) The proper course for the judge was not to take into account the previous case, which related to an offence committed after the offence the subject-matter of the present case. At any rate the previous case ought not to have been taken either in appellant's favour or against him.

(3) We are of the opinion that in the circumstances the sentence against the appellant should be reduced to three months' imprisonment as from the date of conviction.

Appeal allowed. Sentence reduced accordingly.

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Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 7.12.64, at the District Court of Nicosia (Criminal Case No. 9903/64) on one count of the offence of stealing, contrary to section 262 of the Criminal Code, Cap. 154, and was sentenced by Georghiou, D.J., to one year's imprisonment.

L. N. Clerides, for the appellant.

K. C. Talarides, counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

ZEKIA, P.: We have considered your case and it appears that the learned Judge in passing sentence on you in the instant case was improperly influenced by a previous case in which you were bound over. In the previous case as it appears from the record, he thought that he was misled by statements made on your behalf in the address for mitigation of sentence and also by the report of the Welfare Officer describing you as a person of very good character. It was not open to the learned Judge to pass on you a higher sentence of imprisonment because he thought he was misled in a previous case by misrepresentations and treated you very leniently. Otherwise this would amount to a revision of a sentence passed by the same judge.

In the circumstances we think that the proper course for the judge was not to take into account the previous case, which related to an offence committed after the offence the subject matter of the present case. At any rate the previous case ought not to have been taken either in appellant's favour or against him.

We are of the opinion that in the circumstances the sentence against the appellant should be reduced to three months' imprisonment as from the date of conviction.

Appeal allowed. Sentence reduced accordingly.