

1966
Oct. 4

[VASSILIADES, AG P., JOSLPHIDES, J., LOIZOU, AG J.]

IBRAHIM
TEWIK
HODJIA
v
THE POLICE

IBRAHIM TEWIK HODJIA,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 2824*)

Criminal Law—Sentence—Appeal—Appeal against sentence as being excessive—Contention that undue importance was attached to previous convictions of appellant—Not justified in the circumstances of the case—No justification for interfering with sentence imposed, which in the circumstances of the offence, was a rather lenient—Appeal dismissed—Sentence to run according to law, i.e. from the date of the dismissal of the appeal.

Appeals—Appeal in Criminal Cases—Appeal against sentence—See above.

Previous convictions—Whether undue importance was attached in passing sentence—See above

Sentence—Not excessive—See above.

Appeal against conviction and sentence.

Appeal against conviction and sentence imposed on the appellant who was convicted on the 20th June, 1966, at the District Court of Kyrenia (Criminal Case No. 879/66) on one count of the offence of stealing from a dwelling house, contrary to sections 255, 266 (b) of the Criminal Code, Cap. 154, and was sentenced by Savvides, D.J., to eighteen months' imprisonment.

M. Aziz, for the appellant.

K. Talarides, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, AG. P.: This appeal originated as an appeal against conviction for stealing from a dwelling house the sum of £60 in cash.

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When formally charged of the offence, at the police station, on June 14, 1966, by a police sergeant, the appellant admitted stealing the money—part of which he had already returned to the sergeant a few days earlier—explaining that he had not taken it from a stranger's house, but from that of his daughter and son-in-law, to whom he intended returning the money at a later stage.

When called upon to plead, three days later in court, the appellant pleaded not guilty. But in the course of the trial at which he conducted his own defence, the appellant applied for leave to withdraw his plea, as he had admitted the stealing. The Court granted the application, and accepted a plea of guilty to the count for stealing, discharging the appellant of the other count in the charge-sheet for housebreaking.

After hearing the facts from the prosecuting officer and appellant's plea in mitigation, the Court enquired, as usual, whether appellant had any previous convictions. In answer to that enquiry, the prosecuting officer produced a list of 27 convictions, which were put to the appellant by the Judge, one after another, and were all admitted. The list was put on the record ; and is now before us as exhibit 5.

In view of the seriousness of the offence, which is punishable with imprisonment for five years, and in view of appellant's previous convictions, the trial Judge sentenced the appellant—a man 49 years of age—to 18 months imprisonment ; and informed him of the reasons which led him to that decision.

Finding himself in prison with that sentence, the appellant gave notice of appeal on the usual form, which he signed personally, stating as ground of his appeal the allegation that he was not guilty.

This morning before us, the appellant had the assistance of an advocate. Mr. Aziz explained that his client intended his appeal to be one against sentence, only, and not against conviction ; and applied to the Court that the appeal be treated accordingly. There being no objection from the other side, the appeal was heard on that basis.

The contention advanced on behalf of the appellant is that the sentence of 18 months' imprisonment is, in the circumstances of this case, excessive, as the Judge apparently attached undue importance to the previous convictions of the appellant.

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At the end of strenuous effort by learned counsel for the appellant to persuade this Court that the sentence is excessive, we found ourselves unanimously of the view that there is no justification for interfering with the sentence imposed by the trial Judge. And we did not call on the respondents.

We are all of opinion that the circumstances in which the offence was committed, and the past record of the appellant, call for a severe sentence. Although we would not go as far as to say that the sentence imposed by the trial Court is manifestly inadequate, and should be increased, we certainly think that, in the circumstances, it is a rather lenient sentence ; and this appeal must be dismissed. The sentence to run from today, according to law.

*Appeal dismissed. Sentence
to run according to law.*