

1967
May 17

[VASSILIADES, P., TRIANTAFYLLIDES AND JOSEPHIDES, JJ.]

PAVLOS
POLYKARPOU
v.
THE POLICE

PAVLOS POLYKARPOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 2903*)

Criminal Law—Sentence—Sentence of 18 months' imprisonment for publishing obscene matter, contrary to sections 2 and 3 of the Publication of Obscene Subjects Law of 1963 (No. 35 of 1963)—Appeal—Similar previous convictions—Sentence affirmed.

Sentence—See above.

This is an appeal against sentence of 18 months' imprisonment imposed on the appellant, an old man of 70 years of age who was convicted on his own plea of the offence of publishing obscene matter contrary to sections 2 and 3 of the Publication of Obscene Subjects Law (*supra*).

From the record of appellant's previous convictions it appeared that he had ten similar previous convictions in that during the last ten years he has been convicted on ten different occasions for selling or possessing obscene pictures.

The trial Judge in passing sentence referred to appellant's similar previous convictions and observed that the appellant appears to be a dealer in these indecent pictures and added that the court in its duty to protect the community from such offenders "who in order to gain some mils they sell or publish these indecent and obscene photographs" had no alternative to passing a severe sentence of imprisonment.

Held, (1) the more we look into the matter, the more we find that the trial Judge took the right view of the case before him ; and imposed a sentence with which we would not feel inclined to interfere. Indeed, some of us feel that there is room for a longer sentence.

(2) After hearing the appellant, we found it unnecessary to call on counsel for the prosecution ; and it is with difficulty that we find ourselves able to direct that the sentence imposed, be allowed to run from the date of conviction.

Appeal dismissed. Sentence affirmed : to run from conviction.

Order accordingly.

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Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 11th April, 1967, at the District Court of Nicosia (Criminal Case No. 3582/67) on one count of the offence of publishing obscene subjects, contrary to sections 2 and 3 of the Publication of Obscene Subjects Law, 1963 (Law 35/63) and was sentenced by Stylianides, D.J. to eighteen months' imprisonment.

The Appellant, in person.

A. Frangos, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against sentence, taken by the appellant in person, on the ground that the sentence is manifestly excessive. The notice of appeal was signed at the central prison soon after appellant's admission thereto, under a warrant for eighteen months' imprisonment, the sentence imposed upon him in this case, by the District Court of Nicosia, for the offence of publishing obscene matter contrary to sections 2 and 3 of the Publication of Obscene Subjects Law No. 35 of 1963.

On the second hearing in the District Court, on April 11, 1967, the appellant, apparently, on the advice of his advocate, sought leave to change his original plea ; and pleaded guilty to the charge. The prosecuting police officer thereupon, stated to the Court the facts, and produced the pictures, which the appellant was caught selling.

The prosecuting officer, moreover, stated to the Court in due course, the previous convictions of the appellant for similar offences. They were put to him as usual ; and were all admitted by the appellant. During the last ten years he was convicted on ten different occasions, for selling or possessing obscene pictures. According to the record before us, he received sentences ranging from a binding over order, to nine months' imprisonment. Apparently, the Courts tried leniency coupled with advice ; and on other occasions, tried sentences of fine or imprisonment in their endeavour to deter the appellant from persisting on conduct amounting to this scandalous kind of illegality. Unfortunately, this case shows that the Courts have, so far, been unsuccessful in their attempts to help him.

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After referring to appellant's ten similar previous convictions, the trial Judge, in passing sentence, observed that the appellant appears to be a dealer in these indecent pictures ; and added that the Court in its duty to protect the community from such offenders " who in order to gain some mils they sell or publish these indecent and obscene photographs " had no alternative to passing a severe sentence of imprisonment. And imposed a term of eighteen months.

Appellant's plea in mitigation is that he is an old man, over seventy years of age, who has been trapped by the police.

The more we look into the matter, the more we find that the trial Judge took the right view of the case before him ; and imposed a sentence with which we would not feel inclined to interfere. Indeed, some of us feel that there is room for a longer sentence.

After hearing the appellant, we found it unnecessary to call on counsel for the prosecution ; and it is with difficulty that we find ourselves able to direct that the sentence imposed, be allowed to run from the date of conviction.

Appeal dismissed. Sentence affirmed ; to run from conviction.

Order accordingly.