

ANTHOULLIS CHARALAMBOUS CONSTANTINOU,
Appellant,
v.
THE REPUBLIC;
Respondent.

ANTHOULLIS
CHARALAMBOUS
CONSTANTINOU
v.
THE REPUBLIC

(*Criminal Appeal No. 3128*).

Sentence—Military Service—Deserting—Two years' imprisonment for deserting his unit while on military service contrary to section 29 of the Military Criminal Code and Procedure Law, 1964 (as amended from 1964 to 1967)—Not so manifestly excessive in view of the appellant's previous record—Sentence affirmed—Withholding military property contrary to section 85 of the said Law—Sentence.

Sentence—Appeal against sentence—Approach of the Court of Appeal to appeals against sentence—Principles well settled—Sentence although severe still not manifestly excessive—Appeal dismissed—But sentence to run from the date of conviction—Section 147(1) of the Criminal Procedure Law, Cap. 155.

Appeal against sentence—Approach of the Court of Appeal—Principles applicable.

Military Courts—Sentence—Appeal—See hereabove.

This is an appeal against a sentence of two years' imprisonment imposed on the appellant by the Military Court of Nicosia for deserting his unit contrary to section 29 of the Military Criminal Code and Procedure Law, 1964 (as amended from 1964 to 1967); and for withholding military property in his possession contrary to section 85 of the statute, on the ground that such sentence was manifestly excessive. Dismissing the appeal the Court :

Held, (1). The approach of this Court to appeals against sentence has been stated in a line of cases. We may refer to a recent one *Ttooulas v. The Police* (reported in the Part at p. 156 *ante*).

(2) Although a sentence of two years' imprisonment may at first sight appear to be rather severe, when the offence committed by the appellant is placed in the background of his previous conduct in the army we cannot say that the

sentence imposed by the Military Court is so manifestly excessive as to justify interference by this Court. This appeal must fail.

(3) In view, however of all the circumstances including the severity of the sentence we have decided to make directions under section 147(1) of the Criminal Procedure Law, Cap. 155 for the sentence to run from the date of conviction.

Appeal dismissed.

Cases referred to :

Ttooulas v. The Police, reported in this Part at p. 156 *ante* ; principles laid down therein applied.

Appeal against sentence.

Appeal against sentence by Anthoullis Charalambous Constantinou who was convicted on the 23rd September, 1969, at the Military Court sitting at Nicosia (Case No. 411/68) on two counts of the offences of deserting his unit while on military service and for withholding military property in his possession contrary to sections 29 and 85, respectively, of the Military Criminal Code and Procedure Law, 1964 (as amended) and was sentenced to 2 years' imprisonment on the first count and 4 months' imprisonment on the second count, the sentences to run concurrently.

The appellant, appeared in person.

A. Frangos, Senior Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P. : This is an appeal against a sentence of two years' imprisonment imposed on the appellant by the Military Court of Nicosia for deserting his unit while on military service, contrary to section 29 of the Military Criminal Code and Procedure Law of 1964 (as amended from 1964 to 1967) ; and for withholding military property in his possession, contrary to section 85 of the said Code.

The appellant pleaded guilty to both counts ; and after the opening of the facts by the prosecuting officer, applied through his advocate that two other similar offences pending against him at the time, be taken into consideration by the Court in passing sentence.

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The short facts of the case are that after serving for about six months of his national service, the appellant failed to return to his unit on expiry of a short leave of absence for a visit to his home ; and disappeared. He was a wanted man for about seven months, until he was arrested by the Military Police. His explanation to the trial Court, was that having prolonged his visit to his fiancée beyond the period of his leave, the appellant was afraid to return to his unit. To this Court he further alleged that a 'kazandi' pedlar, much senior in age, induced the appellant to go with him round village fairs to help him and share the profits of the 'kazandi'.

The very fact of putting forward such allegations as an explanation for his absence from his unit, indicates the mentality of the appellant ; and the type of person he is.

In passing sentence upon the appellant, the Military Court took into consideration a similar previous conviction for which he had been sentenced to two months' imprisonment. Pointing out the seriousness of the offence, the President of the Military Court took the view that a severe sentence was necessary in this case to help maintain good discipline in the army ; and to get the appellant to reconsider his attitude towards his legal responsibilities both as a soldier and later as a citizen.

The ground upon which the appeal is taken is that the sentence imposed is manifestly excessive. The approach of this Court to appeals against sentence has been stated in a line of cases. We may refer to a recent one, *Christodoulos Charalambous Ttooulas v. The Police*, reported in this Part at p. 156 *ante*. We need not repeat the position. Although a sentence of two years' imprisonment may at first sight appear to be rather severe, when the offence committed by the appellant is placed in the background of his previous conduct in the army, we cannot say that the sentence imposed by the Military Court is so manifestly excessive as to justify interference by this Court. No other reason has been put forward justifying intervention ; and this appeal must fail.

In view, however, of all circumstances, including the severity of the sentence, we have decided to make directions under section 147(1) of the Criminal Procedure Law, Cap. 155, for the sentence to run from the date of conviction.

Appeal dismissed ; sentence to run from conviction.

Appeal dismissed.