

IOANNIS POLYKRATIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3310*).

Criminal Procedure—Outstanding offences—Practice—Mode of dealing with application that outstanding offences be taken into consideration in passing sentence—Section 81 of the Criminal Procedure Law, Cap. 155.

Outstanding offences—Practice—Mode of dealing with applications that outstanding offences be taken into consideration—See supra.

Sentence—Outstanding offences—Practice—Mode of dealing with applications in connection with such offences—See supra.

Sentence—Nine months' imprisonment for common assault—Section 242 of the Criminal Code Cap. 154—Appellant with a bad criminal record including recent convictions for similar offences—Moreover he is a socially maladjusted person who is suffering from a "personality disorder"—Sentence neither wrong in principle nor manifestly excessive—Appeal against sentence dismissed.

Appeal—Sentence—See supra.

Directions on the aforesaid point of practice:

“ When an accused person applies that any outstanding offence or offences be taken into consideration, under section 81 of the Criminal Procedure Law, Cap. 155, and the prosecutor consents to this, both the application and the consent should be stated in the record of the case at the appropriate stage, that is when they are, respectively, made and given, and not, as was done in the present case, solely in the judgment of the trial Court; further the facts and circumstances relating to the other offence or offences should be recorded by the trial Court, unless

1971
Dec. 29

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IOANNIS
POLYKRATIS
v.
THE POLICE

they have already been recorded in the file of any other pending criminal proceedings, in which case the record of the trial should state this, giving the particulars required to trace the file of the said other proceedings”.

The facts of this case sufficiently appear in the judgment of the Court, dismissing this appeal against sentence of nine months’ imprisonment imposed on the Appellant for common assault.

Appeal against sentence.

Appeal against sentence by Ioannis Polykratis who was convicted on the 1st December, 1971 at the District Court of Nicosia (Criminal Case No. 10668/71) on one count of the offence of common assault contrary to section 242 of the Criminal Code Cap. 154 and was sentenced by Colotas, D.J. to nine months’ imprisonment.

Appellant appeared in person.

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

The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.: The Appellant complains that the sentence of nine months’ imprisonment, which was imposed on him on the 1st December, 1971, by the District Court of Nicosia, in respect of a charge of common assault, under section 242 of the Criminal Code, Cap. 154, is an excessive one; the victim of the assault was the wife of the Appellant.

In assessing the sentence to be passed on the Appellant for the offence in question the trial Court took into consideration, at the request of the Appellant and with the consent of the prosecution, four other offences which were committed subsequently by the Appellant, namely an assault causing actual bodily harm, taking part in a fight in a public place, creating there a disturbance, and assaulting, in the course of this incident, a peace officer acting in the execution of his duty.

The Appellant has a very bad criminal record, which includes recent convictions for similar offences, some of them being assaults on peace officers. He was sent to prison on more

than one occasion, the last one being on the 9th December, 1970, when he was sentenced to six months' imprisonment for obtaining money by false pretences. It is clear, not only from his criminal record, but also from a social investigation report which was produced before the trial Court, that the Appellant is socially maladjusted; and it appears from a report of a medical expert that the Appellant is suffering from a "personality disorder".

We have very carefully listened to everything that the Appellant had to say in support of his appeal, but we agree with learned counsel for the Respondents that this is not a case in which there is anything which would entitle us to find that the sentence imposed on the Appellant is either wrong in principle or manifestly excessive; therefore, this appeal has to be dismissed.

In view of the family circumstances of the Appellant, and, also, of the fact that, as it was stated before the trial Court, the Appellant is now reconciled with his wife, we direct, under section 147(1) of the Criminal Procedure Law, Cap. 155, that the sentence which was imposed on him should run from the date of conviction, and not from today.

Before we conclude we must state the following on a point of practice: When an accused person applies that any outstanding offence or offences be taken into consideration, under section 81 of Cap. 155, and the prosecutor consents to this, both the application and the consent should be stated in the record of the case at the appropriate stage, that is when they are, respectively, made and given, and not, as was done in the present case, solely in the judgment of the trial Court; further, the facts and circumstances relating to the other offence or offences should be recorded by the trial Court, unless they have already been recorded in the file of any other pending criminal proceedings, in which case the record of the trial should state this, giving the particulars required to trace the file of the said other proceedings.

Appeal dismissed.