

ANDREAS GEORGHIOU CHRYSOSTOMOÛ,

Appellant.

v.

THE POLICE,

Respondents.

ANDREAS
GEORGHIOU
CHRYSOSTOMOÛ
v
THE POLICE

(Criminal Appeal No. 3293).

Criminal Law—Sentence—Eighteen months' imprisonment for house-breaking and stealing—Young offender—Aged fifteen—Said sentence imposed mainly because trial Court had before it a report from the headmaster of Lambousa School regarding average stay of a young person committed thereto—Trial Court erred in principle in being swayed towards severity by said report—Sentence reduced.

Criminal Procedure—Practice—Appeal—Filed by Appellant from prison on general ground of "innocence"—Allowed to proceed as an appeal against sentence only.

Young offenders—Institutional treatment—Average stay in Lambousa School.

Appeal against sentence.

Appeal against sentence by Andreas Georghiou Chryso-
stomou who was convicted on the 19th October, 1971, at the
District Court of Nicosia (sitting at Morpou) (Criminal Case
No. 4146/71) on two counts of the offences of housebreaking
and stealing contrary to sections 292(a) and 266(g), respectively,
of the Criminal Code Cap. 154 and sections 10 and 12 of the
Juvenile Offenders Law, Cap. 157 and was sentenced by Hji
Constantinou, D.J. to eighteen months' imprisonment on each
count, the sentences to run concurrently.

A. Panayiotou, for the Appellant.

*M. Kyprianou, Counsel of the Republic, for the
Respondents.*

1972
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The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.: The Appellant has been sentenced to concurrent terms of eighteen months' imprisonment in respect of the offences of housebreaking, contrary to section 292(a) of the Criminal Code, Cap. 154, and of stealing from a locked receptacle, contrary to section 266(g) of Cap. 154.

The Appellant, who is fifteen years old, committed the said offences on 14th October, 1971; he broke into the dwelling house of a neighbour at his village, Kyra, and stole from a box in a cupboard the amount of £1; he left behind in the box the amount of £7.

When he appeared before the trial Court he pleaded guilty; and in passing sentence the Court took into consideration two other offences, of shopbreaking and stealing, which the Appellant committed in April, 1971; on that occasion he broke into the coffee-shop of his village and stole the amount of £5.

The Appellant has filed the notice of appeal without the assistance of counsel and the only ground stated therein is that he is "innocent".

When this case came up before us, for the first time, on the 12th November, 1971, his father applied that the Appellant be granted legal aid; we considered it proper, in the circumstances, to appoint counsel to appear for the Appellant.

On the 1st December, 1971, counsel for the Appellant submitted that psychological factors played a considerable part in bringing about the present plight of the Appellant and, on his application, we adjourned the hearing of the appeal so that there could be prepared in the meantime the relevant expert's report.

The report shows that the Appellant is an antisocial type due to insufficient or inadequate home control and due to inconsistency, on the part of his immediate family environment, in dealing with his antisocial behaviour.

As it appears from the social investigation report the Appellant has, indeed, been given in the past opportunities for reforming himself: After it had been found that he was having criminal tendencies and that everything else had failed, including a probation order with a special condition that he had to reside at a youth hostel of the Department of Welfare Services, he was committed to the Lambousa School, which is

a reform school for young persons of his age. During a period of three months he absconded from the School on six occasions and every time he was caught and sent back. It appears that, unfortunately, he is not prepared to allow society to help him.

In accordance with the existing practice of this Court in dealing with appeals filed from prison on the general ground of "innocence" we have decided to grant leave for this appeal to proceed as an appeal against sentence only, as applied for by counsel for the Appellant.

Having perused the material on record before us we are of the view that the sentence of eighteen months' imprisonment was imposed on the Appellant mainly because the trial Court had before it a report from the headmaster of the Lambousa School to the effect that, as the average stay at the School of a young person committed thereto is eighteen months to two years, if the Appellant was to be sentenced to less than eighteen months' imprisonment a bad precedent would be created and other young persons would be encouraged to abscond, too, from the School.

We are of the opinion that the trial Court erred in principle in being swayed towards severity by the said report of the headmaster of the Lambousa School. Nobody should be encouraged to think that he can abscond from such School with impunity, but sight ought not to be lost of the fact that detention in prison is of a punitive nature, as well as of a reformatory nature, whereas detention at Lambousa is primarily of a reformatory nature, and life there is much more comfortable and pleasant than in prison. We, therefore, cannot treat a period which is spent in prison as being the equivalent of a period of the same length which is spent at the Lambousa School. We think that a sentence of imprisonment for nine months will have the effect of making the Appellant appreciate that he should not have absconded from the Lambousa School and that it is, also, adequate for the purpose of punishing the Appellant for his misdeeds; it must be borne in mind that the Appellant is a young person who is being sent to prison for the first time.

We have, therefore, decided to reduce the sentence passed upon the Appellant to a sentence of nine months' imprisonment as from the date of his conviction; and this appeal is allowed accordingly.

Appeal allowed.

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