

1978 December 18

[MALACHTOS, DEMETRIADES AND SAVVIDES, JJ.]

ANDREAS YIANNI MOUSOULOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3694*).

Criminal Law—Sentence—Driving a motor vehicle without a driving licence and without a certificate against third party risks—Three months' imprisonment—Two similar previous convictions and one for obtaining a driving licence by a false declaration while a disqualification order was in force—Fine and disqualification order imposed in previous convictions not taken into account by appellant—Deterrent and public interest aspect—Sentence not wrong in principle or manifestly excessive. 5

Criminal Law—Sentence—Social investigation report—Need for, when a trial Judge contemplates sending to prison a young offender—Social investigation report prepared at request of Court of Appeal not adding anything substantial to the facts which were before the trial Judge. 10

Disqualification order—Conviction for driving without a certificate against third party risks contrary to section 3 of the Motor Vehicles (Third Party Insurance) Laws, 1954 to 1960—No disqualification order, as provided by s. 3(2), and no reasons given for not doing so—Disqualification order made by Court of Appeal in exercise of powers under s. 25(3) of the Courts of Justice Law, 1960 (Law 14/60). 15 20

Courts of Justice Law, 1960 (Law 14/60)—Powers of the Supreme Court under s. 25(3) of the Law.

The appellant pleaded guilty to the offences of driving a motor vehicle without being the holder of a driving licence and without a certificate against third party risks and was sentenced 25

to three months' imprisonment. He was a mason by profession, aged 20, and married with two minor children. He had two similar previous convictions and a conviction for obtaining a driving licence by a false declaration while a disqualification order was in force. In all these convictions he was fined and disqualified from obtaining a driving licence.

In passing sentence the trial Judge stated, *inter alia*, (see pp. 7-8 *post*) that the appellant did not take into account the sentences of disqualification and fine imposed on him in previous convictions and that the only sentence which would have a deterrent effect on him and which would be in the public interest was imprisonment.

Upon appeal against sentence Counsel for the appellant contended:

- (a) That the sentence was manifestly excessive and wrong in principle in that when appellant committed the offences referred to in the first two previous convictions he was under 18 years of age and that the trial Court did not have before it at the time of passing sentence a social investigation report.
- (b) That the trial Judge did not take into account the provisions of section 3* of the Motor Vehicles (Third Party Insurance) Laws, 1954 to 1960, in that he did not make an order as to disqualification and he did not give any reasons in his judgment for not doing so.

Held, (1) that the social investigation report, which was prepared at the request of this Court does not add anything substantial to the facts which were before the trial Judge when he was passing sentence upon the appellant; that in the circumstances of this case the sentence of three months' imprisonment is not manifestly excessive or wrong in principle and this Court fully agrees with the approach of the trial Judge in this respect.

Per curiam: We feel that we ought to stress once again the need for a social investigation report to be prepared when a trial Judge contemplates sending to prison a young offender (see *Mousoulides v. The Police* (1973) 2 C.L.R. 1 and the cases referred to therein).

* Quoted at p. 9 *post*.

(2) That under the powers vested in the Supreme Court by section 25(3) of the Courts of Justice Law, 1960, this Court takes into consideration the facts and circumstances of the case, as well as the personal circumstances of the appellant and feeling that a disqualification of 2 1/2 months, the time that the appellant is actually going to spend in prison, is a sufficient disqualification, it makes an order of disqualification accordingly with effect as from the date the appellant was sent to prison.

Appeal dismissed.

Cases referred to:

Mousoulides v. Police (1973) 2 C.L.R. 1.

Appeal against sentence.

Appeal against sentence by Andreas Yianni Mousoulos who was convicted on the 1st November, 1978 at the District Court of Larnaca (Criminal Case No. 4288/78) on one count of the offence of driving without a driving licence contrary to regulations 25(1) and 71 of the Motor Vehicles and Road Traffic Regulations, 1973 and on one count of the offence of driving a motor vehicle without having in force a policy in respect of third party risks contrary to section 3 of the Motor Vehicles (Third Party Insurance) Laws, 1954 to 1960 and was sentenced by Michaelides, Ag. D.J. to 3 months' imprisonment.

A. Mathikolonis, for the appellant.

Kl. Theodoulou (Mrs.), for the respondents.

MALACHTOS J. gave the following judgment of the Court. The appellant has appealed against his sentence of imprisonment of three months which was passed upon him by the District Court of Larnaca on the 1st November, 1978, when he was convicted on his own plea on 30.10.78 of the offence of driving on the 21st February, 1978, contrary to regulations 25(1) and 71 of the Motor Vehicles and Road Traffic Regulations, 1973, and without a certificate against third party risks in force, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Laws 1954 to 1960.

The facts of the case, as they appear on record, shortly put are as follows:

The appellant, a mason by profession, aged 20, and married with two minor children was found on the 21st February, 1978,

at about 5 p.m. at Mehmet Ali Street in Larnaca town driving his saloon car under Registration No. FS399 without being the holder of a driving licence and, consequently, not covered by an insurance policy against third party risks. There and then
5 he alleged that he had a driving licence but the police had taken it from him.

On the 22nd February, 1978, the appellant produced to the police a Learner's driving licence which was issued for the period of 22nd February, 1978, to 21st August, 1978. The
10 Prosecution when relating the facts of the case informed the trial Court of the following previous convictions of the appellant, all of them admitted.

1. On 4th February, 1975, in Case No. 70/75 of the Fama-gusta District Court he was sentenced to pay a fine of £3.-and
15 was disqualified for three months for driving without a driving licence and third party insurance.

2. On 25th June, 1975, in Case No. 802/75 of the Famagusta District Court he was again convicted for the same offence of driving without a driving licence and third party insurance and
20 was sentenced to a fine of £10.-and was disqualified for 18 months. During the period that this Order of the Court was in force, the appellant applied to the Registrar of Motor Vehicles by making a false declaration and obtained by fraud a learner's driving licence. This behaviour of the appellant resulted to
25 another prosecution and on 7th August, 1976, in Case No. 5043/76 of the Larnaca District Court he was convicted for obtaining a driving licence by a false declaration while a disqualification order was in force and was sentenced to a fine of £20.-and was further disqualified from obtaining a driving licence
30 for 18 months.

The trial Judge then adjourned the case to the 1st November, 1978, when, in passing the sentence complained of, said at page 5 of the record:

35 "Accused is again before the Court for having committed the same offences of driving without a driving licence and third party insurance cover. This fact, taken alone, shows that the accused is a man who persistently ignores and disregards the driving laws and regulations. It also shows, in the opinion of this Court, that the accused does not

take into account the sentences of disqualification and fine imposed on him in previous convictions.

The Courts have a duty to protect the public from offenders like the accused and, especially, these days with the tremendous increase in traffic offences, people should be made to comply with the law.” 5

The trial Judge then taking into consideration the personal circumstances of the appellant and the facts of the case came to the conclusion that the only sentence which would have a deterrent effect on him and which would be in the public interest was imprisonment, and sentenced him to three months imprisonment as from the 30th October, 1978. 10

Counsel for the appellant in his effort to persuade us that the sentence imposed is manifestly excessive and wrong in principle laid stress on the fact that the appellant when he committed the first two offences was under 18 years of age, and that the trial Court did not have before it at the time of passing sentence a social investigation report. 15

The social investigation report, which was prepared at our request and was filed today in Court, does not add anything substantial to the facts which were before the trial Judge when he was passing sentence upon the appellant. 20

In the circumstances of the present case we regard the sentence of three months imprisonment as not being manifestly excessive or wrong in principle and we fully agree with the approach of the trial Judge in this respect. 25

We feel that we ought to stress once again the need for a social investigation report to be prepared when a trial Judge contemplates sending to prison a young offender. (See in this respect *Mousoulides v. The Police* (1973) 2 C.L.R. 1 and the cases referred to therein). 30

It has been pointed out to us by counsel for the respondent that the trial Judge did not take into account the provisions of section 3 of the Motor Vehicles (Third Party Insurance) Laws, 1954 to 1960, in that he did not make an order as to disqualification and he did not give any reasons in his judgment, for not doing so. This section reads as follows: 35

5 “3. (1) Subject to the provisions of this Law, no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of that motor vehicle by such person or such other person, as the case may be, such a policy in respect of third party risks as complies with the provisions of this Law.

10 (2) Any person acting in contravention of this section shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine and a person convicted of an offence under this section shall be disqualified for holding or obtaining a driving licence.

15 (3) Except in such cases as are provided for in subsection (4), a disqualification under the provisions of subsection (2), unless the Court for special reasons otherwise orders, shall be for a period of not less than six months from the date of conviction, or for such longer period as the Court shall, in all the circumstances of the case, consider appropriate.

20 (4) On a second or subsequent conviction of any person of an offence under this section, or on a conviction of any person of an offence under this section after a previous conviction of an offence under section 5, section 6, section 7 or section 13A of the Motor Vehicles and Road Traffic Laws, 1954 to 1959, or of an offence under section 203, section 210 or section 236 of the Criminal Code committed in respect of the user of a motor vehicle, the disqualification under the provisions of subsection (2), unless the Court for special reasons otherwise orders, shall be for a period of not less than twelve months, or for such longer period as the Court shall, in all the circumstances of the case, consider appropriate.

35 (5) A person disqualified for holding or obtaining a driving licence under the provisions of this section shall be deemed to be so disqualified under the provisions of the Motor Vehicles and Road Traffic Laws, 1954 to 1959.

- 6.
- 7. ”

Under the powers vested in this Court by section 25(3) of the

Courts of Justice Law 14/60, we take into consideration the facts and circumstances of the case, as well as the personal circumstances of the appellant, and feeling that a disqualification of 2 1/2 months, the time that the appellant is actually going to spend in prison, is a sufficient disqualification we make an Order accordingly with effect as from 30th October, 1978. 5

In the result, this appeal is dismissed.

Appeal dismissed.