

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS

ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

Cyprus Law Reports

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1980 December 18

[MALACHTOS, DEMETRIADES AND SAVVIDES, JJ.]

NICOS KOKKINOTRIMITHIOTIS,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4191).

5 *Criminal Law—Sentence—Overspeeding—Section 6 of the Motor
Vehicles and Road Traffic Laws, 1972 to 1978—Sentence of
£30 fine and disqualification for 15 days—Duty of trial Judge
to measure punishment on the facts pertaining to sentence—Not
enough to state that everything was taken into consideration
in passing sentence—No aggravating circumstances—Time of
commission of offence, personal circumstances of appellant and
his clean record militating towards lenient sentence—Sentence
of disqualification, in addition to the fine, not only manifestly
10 excessive but, also, wrong in principle—Set aside.*

Road traffic—Overspeeding—Sentence—Disqualification.

The appellant pleaded guilty to the offence of overspeeding and was sentenced to pay a fine of £30 and was disqualified

from holding a driving licence for a period of 15 days. The offence in question took place on Makarios III Avenue in Nicosia at 11 p.m. The circulation at the time of the offence was normal and the appellant was driving at 48 m.p.h. The appellant had no previous convictions, he was working in the Town Planning and Housing Department and he needed his driving licence. 5

Upon appeal against the sentence of disqualification:

Held, that there is nothing on record to show any aggravating circumstances under which the offence was committed; that, on the contrary, the time of the commission of the offence, the personal circumstances of the appellant and his clean record, militate towards a lenient sentence; that it is not enough for the trial Judge to state in his judgment that in passing sentence took everything into consideration, but also to measure the punishment in each case on the facts pertaining to sentence; that in the absence of any aggravating circumstances, as in the present case, where the accused was also a first offender, the sentence of disqualification in addition to the sentence of £30.—fine, was not only manifestly excessive but also wrong in principle; accordingly the sentence of disqualification must be set aside. 10 15 20

Appeal allowed. Disqualification set aside. 25

Cases referred to:

Altieri v. Police (1967) 2 C.L.R. 140.

Appeal against sentence.

Appeal against sentence by Nicos Kokkinotrimithiotis who was convicted on the 10th December, 1980 at the District Court of Nicosia (Criminal Case No. 18538/80) on one count of the offence of overspeeding, contrary to section 6 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was sentenced by Stavrinides, D.J. to pay £30.—fine and was further disqualified from holding or obtaining a driving licence for a period of 15 days. 30 35

E. Vrahimi (Mrs.) with *E. Neofytou*, for the appellant.

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

MALACHTOS J. gave the following judgment of the Court. On the 10th December, 1980, the appellant was convicted on his own admission by the District Court of Nicosia for the offence of overspeeding under section 6 of the Motor Vehicles and Road Traffic Laws 1972 to 1978, that on the 20th day of August, 1980 on Makarios III Avenue in Nicosia, he was driving his motor car under Registration No. JY287 at a speed of 48 mph. He was sentenced to pay £30.—fine and was also disqualified from holding a driving licence for a period of 15 days. The disqualification was ordered under the powers vested in the Court by virtue of section 19 of the said laws.

The facts of the case, as they appear on the short record of proceedings, are the following:

“Facts as per charge sheet. Time 11 p.m. Circulation normal. No reply given by the accused. He has no previous convictions. He is sorry and he needs the driving licence and he is in the service of the Town Planning and Housing Department”.

The judgment of the trial Judge appears on page 2 of the record and reads as follows:

“In view of the above facts and circumstances of the case, and the seriousness of the offence, the place and time and the extent of the miles and the personal circumstances of the accused, the security and the protection of the public and the increase of the nature of the offence in which the accused is involved, he is sentenced to £30.— fine and to disqualification to hold a driving licence for a period of 15 days as from today. The disqualification to be recorded on his driving licence. As to the disqualification I took into consideration the facts of the case, the seriousness of the offence and the protection of the public”.

The appeal is directed only against the disqualification.

Counsel for the appellant in arguing this appeal before us today, submitted that the sentence of disqualification in addition to the fine imposed on the short and incomplete facts of the case, as they appear on the record of proceedings, is manifestly excessive and cited to us the case of *Reginald Charles Edward Stiles-Altieri v. The Police* (1967) 2 C.L.R. 140. In that case the appellant was convicted after he pleaded guilty to the offence

of driving within the built up area of a village at a speed of 48 mph and was sentenced to pay a fine of £18.— There was nothing on record to show what were the circumstances at the material time, as stated by the police. This Court in reducing the fine to one of £5.— stated the following at page 141 of the record: 5

“There can be no doubt that fast driving within a built-up area can be dangerous; and that the Police and all other Authorities and persons concerned should do all in their power to stop inconsiderate drivers from being a danger on the road. On the other hand, it is equally certain that the punishment in each case must be measured on the factors pertaining to sentence; and nothing else. The circumstances in which the offence was committed as well as what is material for the purpose of sentence, as far as the accused is concerned, must be placed before the Court and must be taken into consideration by the Court in passing sentence”. 10 15

In the present case there is nothing on record to show any aggravating circumstances under which the offence was committed. On the contrary, the time of the commission of the offence, the personal circumstances of the appellant and his clean record, militate towards a lenient sentence. It is not enough for the trial Judge to state in his judgment that in passing sentence took everything into consideration, but also to measure the punishment in each case on the facts pertaining to sentence. We are of the view that in the absence of any aggravating circumstances, as in the present case, where the accused was also a first offender, the sentence of disqualification in addition to the sentence of £30.— fine, was not only manifestly excessive but also wrong in principle. 20 25 30

We, therefore, allow the appeal and set aside the sentence of disqualification ordered by the trial Court.

Appeal allowed.