

1981 October 12

[A. LOIZOU, DEMETRIADES, SAVVIDES, JJ.]

RAFAEL MAROUN,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4254*).

5 *Criminal law—Sentence—Importation of an automatic weapon and possession of a firearm—One year's imprisonment—Mitigating factors—Age and family obligations of appellant, a foreigner, who entered Cyprus for an overnight stay—Firearm consisting of parts which could not be put together and used as a firearm—Undue weight given to factor of deterring people from using Cyprus as transit station for the trading of arms—Sentence reduced.*

10 *Criminal Law—Sentence—Assessment—Primarily a matter for the trial Court—Principles on which Court of Appeal acts in an appeal against sentence.*

15 The appellant was on the 20th August 1980, travelling by air from the United States to his country, Lebanon. He stopped at Larnaca airport as he would have to stay in Cyprus in order to take the next ship to Lebanon, there being no direct air connection with his country at the time. Whilst going through the Customs, he was asked by the Customs Officer if he had anything to declare and on answering in the negative, he was required to open his suitcase; and in the course of a search there was found an automatic weapon. He was tried of the offences of importation of an automatic weapon and of possession of a firearm, the importation of which is prohibited and sentenced on his own plea to the concurrent sentence of one year's imprisonment on each count. The appellant was 29 years old and married with two children. When arrested he said that he did not know the law and that he was taking

these things in transit to Lebanon. Later he gave a statement to the Police where he related the circumstances as to how he acquired these items and that he intended to take them to his country to "make business" as he put it. The firearm which he possessed consisted of parts which could not be put together and used as a firearm as such; and there was no evidence to disprove his allegation that his intention was to carry same to his country. In passing sentence the Assize Court said that it was its intention to impose such a sentence that no one would have the impression that it would be tolerated for Cyprus to be used as a transit state for the trading of firearms.

Upon appeal against sentence:

Held, that though the task of assessing sentence is primarily a matter for the trial Court and that this Court will not interfere unless it is satisfied that there are good reasons for doing so, having given due consideration to the totality of the circumstances of this case and in particular to the fact that the parts of a firearm of which the appellant was found in possession would not be used by themselves as such and as to how he came to enter for an overnight stay to Cyprus, and having considered such personal circumstances of the appellant, as his age and his family obligations, this Court has come to the conclusion, without disregarding the seriousness of the offence as such that a lesser sentence of imprisonment could adequately serve the purpose of deterring people from committing such offences or from contemplating to use Cyprus as a transit station for the trading of arms in the area, a fact which has been given undue weight in this particular case; that, therefore, a sentence of imprisonment of three months would be the appropriate one; accordingly the sentence will be reduced to three months.

Appeal allowed.

Cases referred to:

- Mavros and Others v. The Police* (1971) 2 C.L.R. 171;
Demetriou v. The Republic (1974) 2 C.L.R. 45;
Kougkas and Others v. The Police (1968) 2 C.L.R. 209;
Pullen and Another v. The Republic (1970) 2 C.L.R. 13;
Evangelou v. The Police (1970) 2 C.L.R. 45;
Socratous v. The Republic (1970) 2 C.L.R. 181;
Constantinou v. The Republic (1976) 2 C.L.R. 105.

Appeal against sentence.

Appeal against sentence by Rafael Maroun who was convicted on the 15th September, 1981 at the Assize Court of Larnaca (Criminal Case No. 4862/81) on one count of the offence of importation of an automatic weapon and on one count of the offence of possession of a firearm the importation of which is prohibited, contrary to sections 2 and 3(1)(b) (2)(b) of the Firearms Law, 1974 (Law No. 38/74, as amended by Law 27/78) and was sentenced by Pikis, P.D.C. Constantinides and Eliades, D.J.J. to concurrent terms of imprisonment of one year on each count.

G. Pelagias, for the appellant.

D. Papadopoulou (Mrs.), for the respondent.

A. LOIZOU J. gave the following judgment of the Court. The appellant, a Lebanese national, 29 years of age, married and with two children, was found guilty on his own plea, on the following two counts:

(a) Importation of an automatic weapon, contrary to sections 2, 3(1)(b)(2)(b) of the Firearms Law, 1974 (Law No. 38 of 1974, as amended by Law No. 27 1978), and

(b) possession of a firearm, the importation of which is prohibited, contrary to sections 3(1)(b)(2)(b) of the same Law.

From the particulars of the offence, as given in the two counts, it appears that the automatic firearm referred to is one of an American make, of 5.56 m.m. calibre, otherwise known as M. 16, together with 25 cartridge cases.

The appellant was on the 20th August 1980, travelling by air from the United States to his country Lebanon. He stopped, however, at Larnaca airport and as he would have to stay in Cyprus in order to take the next ship to Lebanon, there being no direct air connection with his country at the time, applied and was granted an entry visa by the Immigration Authorities. Whilst he was going through the Customs, he was asked by the Customs Officer if he had anything to declare and on answering in the negative, he was required to open his suitcase. In the course of a search, the items, subject matter of the two counts,

were found therein; the appellant was arrested and after he was cautioned, he said that he did not know the law and that he was taking these things in transit to Lebanon. Later, he gave a statement to the Police where he related the circumstances as to how he acquired these items and that he intended to take them to his country to “make business” as he put it. 5

The Assize Court of Larnaca before which the case was brought, after hearing the facts of the case and what was said on behalf of the appellant in mitigation, imposed on him sentences of imprisonment of one year on each count, to run concurrently. 10

In passing sentence the Assize Court laid stress on the fact that the firearm in question which he possessed and carried, consisted in fact of parts which could not be put together and used as a firearm as such and pointed out further that there was no shred of evidence to disprove the allegations of the appellant that his intention was to carry same to his country, where, apparently on account of the prevailing conditions, there was some demand for such parts. It therefore concluded that it was not going to impose such deterrent sentence for an offence of this nature, as are systematically imposed by the Cyprus Courts, in their effort to stamp out acts of unlawful possession and carrying of firearms and ammunition. It said, however, that it was its intention to impose such a sentence that no one would have the impression that it would be tolerated for Cyprus to be used as a transit station for the trading of firearms and it was for this reason that it came to the conclusion that a sentence of imprisonment was an appropriate one. It examined, however, whether such a sentence would be suspended. For that purpose it considered the principles regulating the exercise of a Court’s discretion in that field which are to be found among other cases in that of *Mavros and others v. The Police* (1971) 2 C.L.R. p. 171; and *Demetriou and The Republic* (1974) 2 C.L.R. 45 and concluded that on the facts of the case there was no justification for suspending the sentence of imprisonment which it had imposed. 15
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It has been repeatedly said by this Court that the task of assessing sentence is primarily a matter for the trial Court and that this Court will not interfere unless it is satisfied that there are good reasons for doing so. See *inter alia Kougkas* 40

and Others v. The Police, (1968) 2 C.L.R. 209, *Pullen and Another v. The Republic*, (1970) 2 C.L.R. 13, *Evangelou v. The Police* (1970) 2 C.L.R. 45; *Socratous v. The Republic*, (1970) 2 C.L.R. 181; and *Constantinou v. The Republic* (1976) 2 C.L.R. 105.

5 It has to be examined therefore if there exist in the present case such circumstances as to justify our interference with the sentence imposed upon the appellant.

10 Having given our due consideration to the totality of the circumstances of this case and in particular to the fact that the parts of a firearm of which the appellant was found in possession
15 could not be used by themselves as such and as to how he came to enter for an overnight stay to Cyprus, and having considered such personal circumstances of the appellant, as his age and his family obligations, we have come to the conclusion, without
20 disregarding the seriousness of the offence as such that a lesser sentence of imprisonment could adequately serve the purpose of deterring people from committing such offences or from contemplating to use Cyprus as a transit station for the trading of arms in the area, a fact which has been given, in our view, undue weight in this particular case.

For all the above reasons we feel that a sentence of imprisonment of three months would be the appropriate one.

25 The sentence therefore is reduced to three months imprisonment on each count as from the 20th August 1981, the date the appellant was arrested and kept in custody, sentences to run concurrently.

Appeal partly allowed.