

1981 February 17

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDES, JJ.]

ANDREAS CHR. ASSIOTIS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4186*).

*Criminal law—Sentence—Driving motor cycle without a driving licence and without third party risk policy—Fines of C£10 and C£25 on each count, respectively, in addition to 12 months' disqualification on the second count—Appellant seventeen years old, a first offender, of very good character, a member of a displaced family and a pupil of a secondary school—Undue weight placed on deterrent purpose of punishment—And no due weight placed on appellant's personal circumstances and particular facts of this case—Not appropriate to impose on appellant, a pupil with no income of his own, a fine of C£25 in addition to fine of C£10 and disqualification—Sentence wrong when looked at as a whole—Sentence of C£25 fine set aside.*

This was an appeal against sentences of C£10 and C£25 fine and 12 months' disqualification which were imposed on the appellant after pleading guilty to the offences of driving a motor cycle without a driving licence and without a policy in respect of third party risks.

The above offences were committed when the appellant wheeled, without riding it, the motor-cycle of his brother to a petrol station in his village in order to have it washed there ; and he rode it on a road on his way back. There was no allegation that there has been endangered the life or property of any person due to what the appellant did.

The appellant was seventeen years old at the time, a pupil

of a secondary education school and a member of a displaced family. He was a first offender and of very good character.

Upon appeal against sentence :

*Held*, that the trial Judge placed undue weight on the deterrent purpose of punishment and did not attribute due weight to the personal circumstances of the appellant and to the particular facts of this case ; that, especially, as the appellant was a pupil not having any income of his own it was not appropriate, in respect of the second of the aforesaid offences, to sentence him to a fine of C£25 in addition to his disqualification for 12 months ; that it was sufficient, in so far as the monetary aspect of punishment was concerned, to order appellant to pay a fine of C£10 in respect of the first offence ; that, therefore, the sentence is, when looked at as a whole, wrong, and the fine of C£25 must be set aside.

*Appeal partly allowed.*

#### Appeal against sentence.

Appeal against sentence by Andreas Chr. Assiotis who was convicted on the 28th November, 1980 at the District Court of Nicosia (Criminal Case No. 16957/80) on one count of the offences of driving without a driving licence, contrary to regulations 25(1) and 71 of the Motor Vehicles and Road Traffic Regulations, 1973 and section 5 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72), on one count of the offence of using a motor vehicle without having in force a policy in respect of third party risks, contrary to section 3(1)(2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and on one count of the offence of taking and driving a motor vehicle without the consent of the owner and was sentenced by Stavrinides, D.J. to pay £10.- fine on the first count, £25.- fine and disqualified from obtaining or possessing a driving licence for a period of twelve months on the second count and was bound over in the sum of C£200.- for a period of two years to keep the law applicable to traffic matters on the third count.

*St. Kittis*, for the appellant.

*A. M. Angelides*, Counsel of the Republic, for the respondents.

TRIANAFYLLIDES P. gave the following judgment of the Court. The appellant pleaded guilty to the offences of driving a motor

cycle without a driving licence, of using it on a road without having in force a policy in respect of third party risks and of taking and driving it away without the consent of its owner.

5 He was sentenced to pay a fine of C£10 in respect of the first of the above offences, a fine of C£25 in respect of the second offence and was, also, disqualified from obtaining or possessing a driving licence for a period of twelve months, and in relation to the third offence he was bound over in the sum of C£200, for a period of two years, to keep the law applicable to traffic  
10 matters.

Counsel for the appellant has, in effect, submitted that the sentences imposed on the appellant amount, when taken together, to a manifestly excessive punishment.

15 The appellant, who was at the time only seventeen years old, committed the offences in question by wheeling, without riding it, the motor cycle of his brother, who was away from Cyprus at the time, to a petrol station in his village, Dhali, for the purpose of having it washed there; and then, on the way back, he rode it on a road in the said village. It has not been  
20 alleged that due to what the appellant did there has been endangered the life or property of any person.

At the time of the commission of the aforementioned offences the appellant was a pupil of a secondary education school and he is a member of a displaced family. He was a first offender  
25 and is a person of very good character.

We do share the view of the trial Judge that young persons should be discouraged from driving a motor cycle, or any other vehicle, without a driving licence and, especially, without being covered by insurance regarding third party risks.

30 On the strength, however, of what the trial Judge has stated in passing sentence, we are of the view that he placed undue weight on the deterrent purpose of punishment and that he did not attribute due weight to the personal circumstances of the appellant and to the particular facts of the present case.  
35 Especially, as the appellant was a pupil not having any income of his own we do not think that it was appropriate, in respect of the second of the aforesaid offences, to sentence the appellant to the payment of a fine of C£25 in addition to his disqualifica-

tion as a driver for a period of twelve months. It was sufficient, in so far as the monetary aspect of punishment was concerned, to order the appellant to pay a fine of C£10 in respect of the first offence.

We have, therefore, decided to intervene in favour of the appellant because the punishment imposed on him is, when looked at as a whole, wrong, and to set aside the fine of C£25. 5

This appeal is, therefore, allowed accordingly.

*Appeal allowed.*