

1982 October 12

[A. LOIZOU, MALACHTOS AND SAVVIDES, JJ.]

YIANGOS IOANNOU SARMAS,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

(Criminal Appeal No. 4345).

*Criminal Law—Sentence—Stealing and unlawful possession of a  
firearm—Concurrent sentences of nine months' and two years'  
imprisonment respectively—Three other offences taken into  
consideration in passing sentence—Seriousness of the offences  
—Sentence not manifestly excessive but a lenient one—Upheld.*

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The appellant, a member of the National Guard, pleaded guilty on two counts of the offences of stealing a machine-gun and of unlawfully possessing the said firearm and was sentenced, by the Military Court to concurrent sentences of nine months' imprisonment on the first count and two years' imprisonment on the second count. In passing sentence the trial Court took into consideration three other outstanding cases against the accused, namely a case of stealing, a case of breaking and stealing and a case of desertion from his unit. The Military Court, also, took into consideration a social investigation report, and the evidence of a Psychiatrist specialist which was to the effect that appellant was psychologically suffering though he was fully aware of the consequences of his acts. The appellant was born in 1963, he graduated the 5th Class of a Secondary School and worked as an upholsterer until he joined the National Guard.

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*Upon appeal against sentence:*

*Held*, that the gravity of the offences which unquestionably undermine the Law and pave the way to anarchy, which is the worse enemy of democracy and happy life therein, need hardly be stressed; that having given due consideration to this case,

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this Court, has not been persuaded that the sentence imposed on the appellant is manifestly excessive or that no due weight was given to the personal circumstances of the appellant justifying interference with it by this Court; that on the contrary it seems a lenient one, obviously arrived at by the Military Court after taking into account, as they said that they did, duly and in the most favourable to the appellant manner, his personal circumstances; that one should not lose sight of the fact that the maximum sentence provided by law is three years' imprisonment for the first count and 15 years' imprisonment for the second count; accordingly the appeal must fail. 5 10

*Appeal dismissed.*

Cases referred to:

*Athinis v. The Republic* (1982) 2 C.L.R. 145.

**Appeal against sentence.** 15

Appeal against sentence by Yiangos Ioannou Sarmas who was convicted on the 5th August, 1982 by the Military Court sitting at Nicosia (Case No. 209/82) on one count of the offence of stealing a machine-gun, contrary to sections 255(1) and 262 of the Criminal Code, Cap. 154 and on one count of the offence of unlawful possession of a machine-gun, contrary to sections 3(1)(2)(b) of the Firearms Law, 1974 (Law No. 38/74) (as amended by Law No. 27/78) and was sentenced to nine months' imprisonment on the first count and to two years' imprisonment on the second count, the sentences to run concurrently. 20 25

*N. Andreou*, for the appellant.

*S. Tamasios*, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. The appellant was found guilty on his own plea by the Military Court on two counts, the one for stealing on the 1st March, 1982, a machine-gun, contrary to sections 255(1) and 262 of the Criminal Code, Cap. 154, and the other for unlawful possession of the said firearm, contrary to sections 3(1)(2)(b), of the Firearms Law 1974, (Law No. 38 of 1974), as amended by (Law No. 27 of 1978), and he was sentenced to nine months' imprisonment on the first count and two years' imprisonment on the second count, the sentences to run concurrently. 30 35

In passing sentence the Military Court, with the consent of the prosecution and the accused, took also into consideration three other outstanding offences which the accused admitted 40

to have committed. The first one was that during the night between the 1st and the 2nd March he stole from a car two camp-beds, four blankets, one saw and a First Aid kit of a total value of C£45. The said car had been parked in the garage of the house of its owner and in the afternoon of the 2nd March was found in the area of Strovolos in Nicosia. The second case was one of desertion from his unit without a permit. In respect of both cases proceedings had already been instituted; the third case was one of breaking and entering on the 1st March, 1982, at locality "Governor's Beach", in the area of Pentakomo, into the trailer of Panayiotis Andreou, of Nicosia, wherefrom he stole objects to the value of C£120.- and also for breaking into the trailer of Nicos Costa Konnaris, of Limassol, and stealing objects to the value of C£200.- and for causing C£10.- damage to the trailer of Panayiotis Andreou and damage to that of Konnaris, to the value of C£102.

The facts of the case are briefly as follows:-

The appellant was born in 1963. He graduated the 5th class of a Secondary School and worked as an upholsterer, until he joined the National Guard on the 14th July, 1981. On the 26th February, 1982, he was posted at the KEN Larnaca and he was entrusted with a machine-gun "ZASTAVA" type, with five empty magazines and a belt. On the 1st March, 1982, together with two other soldiers he left without a permit his unit and took with him the aforesaid items, wandering around with his two colleagues in various places. On the 7th March, 1982, the Police, acting on information, carried out a search in the area of Anthoupolis, Nicosia, and found the appellant hiding in a machine-gun post in that area with one of the other soldiers, namely, Constantinos Iacovou Koutouri and asked them to come out. On the same day the third soldier Andreas Yiangou was also found. He then led the Police to the area of Tseri where he pointed out a hide out in which the items stolen were kept in a bag.

During the period they were wandering around, several offences were committed and in respect of some of them he was prosecuted before the District Court of Nicosia and he was placed on probation. In the course of his service with the National Guard he had committed certain disciplinary offences

and he had also two previous convictions, one in 1980 for conspiracy to commit a felony for which he was sentenced to nine months' imprisonment, and another for desertion for which he was sentenced to one months' imprisonment.

With regard to his personal circumstances, in addition to the Social Investigation Report, which was prepared and produced at the trial, Dr. Nicolas Neophytou, a Psychiatrist Specialist, in charge of the Psychiatric Services of the Republic, was called and gave evidence as to his psychological condition. 5

The Military Court then after giving due consideration, as it said, to both the report and the testimony of Dr. Neophytou, and after taking into consideration the fact that the appellant was psychologically suffering, though fully aware of the consequences of his acts, sentenced him as aforesaid. 10

The appeal against sentences was argued on two grounds: 15

- (a) That it was manifestly excessive, taking into consideration the circumstances of the case and the established principles of law, and
- (b) That in imposing the sentence on the appellant, the Military Court did not take into consideration the seriousness of the psychiatric evidence and the fact that the appellant had already been under a probation order for a period of two years by virtue of the order of the District Court of Nicosia in a case committed during the same period. 20 25

We have listened carefully to what has been said on behalf of the appellant regarding his personal circumstances. No doubt he has been through difficult times, especially when he found himself with his family enclaved in Rizocarpasso village under Turkish occupation and with his father taken prisoner to Turkey from where he was freed in October 1974. 30

The gravity of the offences, however, in respect of which the sentences complained of were imposed, need hardly be stressed. In addition to deserting his Camp and taking with him a firearm, he and his companions went on a stealing spree of quite a serious nature as it appears from the summary of the facts related with regard to the offences which were taken into consideration by 35

the Military Court in passing sentence. Recently we had the occasion in Criminal Appeal No. 4294\* in which judgment was delivered on 6th July, 1982, to reiterate once more the serious view that the Courts take for offences relating to unlawful possession and use of firearms and the consequences that such offences they entail. We pointed out that such offences unquestionably undermine the law and pave the way to anarchy which is the worse enemy of democracy and happy life therein.

10 Having given due consideration to this case, we have not been persuaded that the sentence imposed on the appellant is manifestly excessive or that no due weight was given to the personal circumstances of the appellant justifying interference with it on our part on appeal. On the contrary, it seemed to us a lenient  
15 one, obviously arrived at by the Military Court after taking into account, as they said that they did, duly and in the most favourable to the appellant manner, his personal circumstances. One should not lose sight of the fact that the maximum sentence provided by law is three years' imprisonment for the first count  
20 and 15 years' imprisonment for the second count.

For all the above reasons the appeal is dismissed.

*Appeal dismissed.*

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\* See Athinis v. The Republic reported in (1982) 2 C.L.R. 145.