

1986 May 19

[TRIANTAFYLIDIS, P., MALACHTOS, PIKIS, JJ.]

MARIOS PANAYIOTOU ZACHARIA
ALIAS ZAOURTIS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4746).

Sentence—Obtaining goods and money by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154—Imprisonment of four months—Same sentence on appellant's co-accused, but suspended in view of his clean record—Restitution to complainant effected by appellant—
5 *Trial Court credited restitution to both accused—Appellant had previous convictions—Appellant's sentence reduced to two months, as it was too late to suspend it.*

10 The appellant and his co-accused were jointly charged with the aforesaid offence. They both pleaded guilty. The trial Court sentenced them to imprisonment of four months, but in view of ex-accused's one clean record, the sentence is so far as the ex-accused was concerned was suspended.
15 Appellant had previous convictions. In passing sentence the trial Judge took into consideration as a mitigating factor affecting both accused that they had made restitution to the complainant. In fact, as it transpired during

the hearing of the appeal, it was only the appellant, who made the restitution.

Held, allowing the appeal: (1) If the trial Judge had credited only the appellant with the restitution, he might have suspended the sentence of imprisonment in his case 5
too, notwithstanding his previous convictions and, thus, the appellant would not have been left with a lingering grudge.

(2) As the appellant has already served part of his sentence, it is too late to suspend it and the best course is to reduce it to one of two months' imprisonment. 10

Appeal allowed.

Appeal against sentence.

Appeal against sentence by Marios Panayiotou Zacharia alias Zaourtis who was convicted on the 15th April, 1986 at the District Court of Limassol (Criminal Case No. 32544/85) on one count of the offence of obtaining goods and money by false pretences contrary to sections 297, 298 and 20 of the Criminal Code, Cap. 154 and was sentenced by Artemis, S. D.J. to four months' imprisonment. 15

Appellant appeared in person. 20

No appearance for the respondents.

TRIANAFYLLIDES P. gave the following judgment of the Court. The appellant was one of the two accused persons in criminal case No. 32544/85, in the District Court of Limassol, who both pleaded guilty to the offence of obtaining goods and money by false pretences, contrary to sections 297 and 298 of the Criminal Code, Cap. 154. 25

The first accused, who is not now before us, had a clean past and though it was found by the learned trial Judge that the proper sentence in this case was a sentence of imprisonment of four months for both the accused, the trial
5 Judge, quite rightly in our view, took into account his clean past in deciding to suspend the sentence of imprisonment in so far as the first accused was concerned.

When the trial Judge came to deal with the second accused, the appellant, he took fully into account the personal
10 and other extenuating circumstances relevant to him, but decided that in view of the previous convictions of the appellant it was not proper to suspend the sentence of imprisonment in his case, too.

The trial Judge took into account, also, that the two
15 accused had made restitution to the complainant, but he appears, from his judgment, to have credited the restitution to both the accused, whereas we now know that in fact it was only the appellant who has, with quite some difficulty, managed to raise, without any assistance from
20 the first accused, the funds needed in order to make restitution on his own to the complainant.

We feel that if the trial Judge had credited only the second accused with effecting restitution to the complainant he might have decided to suspend the sentence of
25 imprisonment in his case, too, notwithstanding his previous convictions, and, thus, this appellant would not have been left with a lingering grudge that, though it was he only who had made restitution, he has been sent to prison, while the first accused, who has not taken any pains to make
30 restitution, has been given the benefit of a suspended sentence.

It is too late for us to consider now suspending the sentence of imprisonment which was imposed on the appellant, as he has already started serving such sentence and

has been for more than a month in prison. We, therefore, think that, in the interests of justice, the better course is to reduce the sentence of imprisonment which was passed on the appellant to one of two months' imprisonment, and this appeal is allowed accordingly.

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Appeal allowed. Sentence reduced to two month's imprisonment.