

1987 April 4

TRIANTAFYLIDIS, P., DEMETRIADES, LORIS, JJ.]

DEMETRAKIS ANDREOU DEMETRIOU,

Appellant.

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4831).

5 *Sentence — Desertion from National Guard — First offender — Nine months' imprisonment — Trial Court influenced by fact that appellant remained away from his unit for a period 3 months approximately — Appellant, however, had not been evading arrest, but could easily be found — Sentence reduced to six months' imprisonment.*

The facts of this case sufficiently appear in the judgment of the Court

Appeal allowed

Appeal against sentence.

10 Appeal against sentence by Demetrakis Andreou Demetrioou who was convicted on the 9th January, 1987 at the Military Court of Nicosia (Case No. 660/86) on one count of the offence of desertion from his unit contrary to sections 29(1) (2) and 31(1)(2) of the Military Criminal Code and Procedure Law, 1964 and was sentenced to nine months' imprisonment.

15 *G. D. Georghiou, for the appellant.*

St. Tamassios, for the respondent.

20 TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant was sentenced by the Military Court to nine months' imprisonment, commencing on 9 January 1987, for the offence of desertion from his unit in the National Guard.

On 16 March 1987 we adjourned to today the further hearing of this appeal because we found it necessary to have before us, in addition to the social investigation report which was produced

before the trial Court reports by a psychiatrist and by a psychologist regarding the mental health and psychological condition of the appellant, which appear to have been influenced and affected adversely to a certain extent by a very unpleasant skin affliction from which the appellant is suffering

5

We agree with the trial Court that the offence of desertion is a serious one, especially in the present difficult times for our country, and we agree also, with the approach to the assessment of the proper sentence to be imposed on the appellant which was adopted by the trial Court. We cannot, therefore, say that this is a case in which a sentence of imprisonment was wrong in principle

10

We should not, however, lose sight of the fact that the appellant has been serving in the National Guard since January 1985, and until he committed the offence of desertion on 24 March 1986 he was very well behaved. On the basis of all the material before us he appears to be a person of good, even though rather weak, character

15

What seems to have influenced the trial Court in imposing a rather longer than usual for a first offender sentence of imprisonment as regards desertion was the fact that he remained away from his unit for a period of just over three months, up to 25 June 1986

20

Had this been a case in which it was difficult to trace the appellant because he had been evading arrest, this factor could, indeed, be said to be an aggravating one. But the appellant was all the time at home. He could easily have been found, arrested and brought back to his unit. It was because of some laxity on the part of the military authorities that he was allowed to remain at large for three months. In a way he was, perhaps, made to believe wrongly that his desertion was not regarded, after all, as a very serious matter

25

30

We really do not think that in this particular case there should have been attributed, in assessing the sentence to be imposed on the appellant, much importance to the length of the period during which his desertion had lasted and we are of the opinion that the trial Court, having given undue weight to this aspect of the case, has imposed on the appellant a manifestly excessive, in the circumstances, sentence

35

In the light of all the foregoing, including the bad psychological condition of the appellant, we have decided to reduce the sentence passed upon him to six months' imprisonment.

5

Appeal allowed.

*Sentence reduced to
six months.*