[JACKSON, C.J., AND HALID, J.]

NICOLAS STRATOS AND ANOTHER, *Appellants*,

v.

THE POLICE, *Respondents*.

(*Criminal Appeal No.* 1772.)

Sentence—Trial Court incorrectly informed with regard to previous convictions—Revision of Sentence on appeal—Extent to which previous convictions should be taken into account.

The appellants were two out of eight persons that pleaded guilty to taking part in an unlawful procession. The other six were either fined or cautioned and discharged, but the appellants were each sentenced to six months imprisonment on account of previous convictions. In the case of one of them the Court was wrongly informed as to his previous convictions.

Held: For the Appeal Court to revise a sentence there must be some error in principle. When a man has committed serious offences and has served long terms for them, it is not required that he should suffer severe punishment for a later offence which does not intrinsically call for it. The principle laid down in *Rex v. Gumbs* (1926) XIX Criminal Appeal Reports, p. 74 followed.

Appeal from the District Court of Nicosia.

G. Ladas for the appellants.

C. Glykys, Asst. Crown Counsel, for the respondents.

The facts are set out in the judgment of the Court which was delivered by :—

JACKSON, C.J. : This is an appeal, by leave of the Court, against a sentence of six months' imprinsonment passed upon each of the two appellants by the District Court in Nicosia on the 30th October last, for taking part in a procession without a written permit from the Commissioner contrary to the provisions of section 3 of the Assemblies, Meetings and Processions Law, 1932.

At the trial there were eight accused persons and all were charged with having organized the procession as well as with having taken part in it. All the accused pleaded guilty to the second charge and the first was withdrawn.

The facts, as they appear from the record of the trial are as follows :— On Sunday, 24th October last, a meeting of all Trade Unions was held at the Trade Union premises in Nicosia to protest against the high cost of living. For this meeting a permit had been granted by the proper authority.

At about noon, when the meeting ended, a procession formed up outside the Trade Union premises and marched off in the direction of Metaxas Square, the eight accused being at the head of it. The procession carried banners with slogans, but there is no suggestion that these slogans were provocative, nor, indeed, is there any evidence as to what the slogans were. It was stated before us that about, 3,000 persons took part in the procession. There was no evidence of this on the record, but the statement was not disputed by Counsel for the Crown. Nor was it disputed that the procession was perfectly orderly or that it had any other object than that of the meeting for which a permit had been granted by the proper authority, namely, to protest against the high cost of living.

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No disturbance of any kind appears to have accompanied the procession, but while it was on its way it was twice stopped by the police who warned those taking part in it that they were committing a breach of the law and told them to disperse. In reply to these warnings two of the accused, neither of them being an appellant in this case, told the police that the procession was only going to Metaxas Square and would disperse there. And it did so.

It was in evidence that an official notice had been published in the press on the 13th May last, drawing the attention of the public to the law concerning the holding of meetings and processions and warning the public that persons taking part in them unlawfully would be punished. It appeared to have been suggested at the trial that, in spite of this warning, no notice had been taken of other processions which had taken place without permit. Unfortunately there was no evidence on this point.

On these facts the Court below proceeded to consider the sentences which should be passed.

Five of the eight accused had no record of previous convictions and they were merely cautioned and discharged.

One of the accused had, according to the record of the trial, a previous conviction for assault at some unspecified date and had been bound over. He was fined £10 or 3 months' imprisonment in default.

As for the two appellants, who each received a sentence of six months' imprisonment, one of them, Nicolas Stratos, had a previous conviction in February, 1934, for conspiracy to overthrow the Government of Cyprus and was then sentenced to two years' imprisonment.

The Court below appears to have been informed that the other appellant, George Mannouris, had been convicted of the same offence, though he had not been sentenced to imprisonment, but had only been bound over for three years in a sum of £50.

It is evident that in sentencing these two appellants to six months the Court below was very powerfully influenced by what it believed to be their previous convictions. Immediately below the statement of previous convictions in the record of the trial appears the note "Two very bad. Conspiracy to overthrow Government".

Now we have checked these convictions by reference to the original record of the trial in February, 1934, in which both the appellants were charged. The second appellant, George Mannouris, was not convicted of conspiracy to overthrow the Government but of being a member of an unlawful association, namely, the Cyprus Communist Party. A very different offence.

It thus appears that in determining to pass a sentence of six months' imprisonment on George Mannouris for taking part in an unlawful procession, the District Court of Nicosia was influenced by information placed before it by the prosecution which was incorrect in a most important particular, namely, the description of the offence of which this man had been previously convicted. We cannot too strongly condemn the carelessness which led to this error in the information given to the District Court for the purpose of enabling the Court to consider what sentence it should pass. Such errors are likely to lead to grave injustice.

It is clear that the sentence passed upon George Mannouris must be reduced on this ground alone.

We turn to other considerations affecting the sentences passed on the appellants.

The extent to which previous convictions should be taken into account always raises considerations of great difficulty, a fact which is witnessed by the large number of authorities in which the question is discussed. Many of these have been quoted to us. It will be sufficient for us to quote one in which two important principles were laid down in the English Court of Criminal Appeal.

In the case of *Rex* v. *Gumbs* (XIX Criminal Appeal Reports, p. 74) Lord Chief Justice Hewart in 1926 made the following statement :—

> " Two principles from time to time have been mentioned in this Court, and in some cases they may have to be considered together. One is that this Court never interferes with the discretion of the Court below merely on the ground that this Court might have passed a somewhat different sentence; for this Court to revise a sentence there must be some error in principle. Secondly, when a man has committed serious offences and has served long terms for them, it is not required that he should suffer further severe punishment for a later offence which does not intrinsically call for it ".

In our view the Court below, in sentencing the appellants, gave excessive weight to what it believed to have been their previous convictions, quite apart from the fact that it was wrongly informed in regard to one of them, and did not give sufficient weight to what their later offence intrinsically deserved.

What the trial Court considered that this later offence intrinsically deserved is shown by the fact that those accused who had no previous conviction against them were merely cautioned. We do not say that this Court would have taken the same view, but it is very evident that in sentencing the appellants to six months' imprisonment the Court was primarily influenced by offences of a very different character which it believed to have been committed nearly 10 years ago. Nothing was said against the character of the appellants in that long interval.

In considering to what we should reduce the sentences of imprisonment passed on the appellants we have been placed in a difficulty by the fact that they have been in prison, as ordinary prisoners, we are informed, since the date of their conviction, the 30th October, that is to say for a period of 35 days, until today. If we reduced the sentences of imprisonment to sentences of fines, and this we would have thought adequate, we should merely add to the punishment which the appellants have already suffered. We think they have suffered more than enough and we consequently reduce their sentences of six months' imprisonment to 34 days in each case to run from the date of their conviction, so that they may be released forthwith.

It is unfortunate that this course prevents us from making any distinction in favour of the appellant who probably suffered from the error in the Court below as to his previous conviction. But we see no way out of that difficulty.

Appeal allowed.