

IOANNIS EFSTATHIOU, *Appellant,*
v.
THE POLICE, *Respondents.*
(*Criminal Appeals Nos. 2125 and 2126*).

IOANNIS
EFSTATHIOU
v.
THE POLICE.

Criminal Procedure—Plea in mitigation after plea of Guilty—Facts put forward amounting to plea of Not Guilty—Course to be followed by trial Judge.

Observations by Supreme Court on course to be followed by a trial Judge in cases where after a plea of guilty counsel for the accused puts forward facts and grounds in mitigation which amount in effect to a plea of not guilty.

Appeal against conviction and sentence.

The appellant was convicted by the District Court of Limassol on the 19th September, 1957 (Cases Nos. 5878/57 and 5905/57) of two offences of stealing two bicycles, contrary to section 256 of the Criminal Code, Cap. 13, and was sentenced by Kacathimis, Ag. P.D.C., to one year's imprisonment on each count, the sentences to run concurrently.

A. Myrianthis for the appellant.

H. Gosling for the respondents.

The facts of the case are sufficiently set out in the judgment of the Court delivered by :

ZEKIA J. : The appellant in this case was represented in the Court below and was charged with bicycle stealing in two separate cases to which he pleaded guilty. The prosecution gave the facts of the case which were consistent with a plea of guilty and later counsel for the appellant addressed the Court in mitigation.

It appears that in putting forward grounds in mitigation, he went to the extent of expressing himself in a way that was not consistent with the plea of the accused. However, there was no application on his behalf to withdraw the plea and it is clear from the record that, notwithstanding his address in mitigation, he insisted on the plea throughout the trial. This Court has already indicated its view on a similar point in a recent case; when there is a plea of guilty, unless there is application for leave to appeal, an appeal cannot be entertained under section 132 (b) against conviction and such leave can only be granted when the facts alleged do not support, and the charge or information does not disclose, an offence, which is not the case in the present one; the facts disclosed constitute an offence.

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Counsel went further and said that in fact there was no plea, that is, the plea of guilty was wrongly entered on the record ; but there was no application for leave to appeal to this Court, and, in our view, if this was the case he ought to have applied under section 131 (1) (b) for leave to appeal. There is nothing in this case to amount to a miscarriage of justice. It is indeed desirable for a trial Judge to be very slow in accepting a plea of guilty in cases where counsel appearing on behalf of the accused puts forward facts and grounds in mitigation which amount in effect to a plea of not guilty. In such cases the attention of counsel should be drawn and, if counsel or the accused insists on such facts and grounds which are inconsistent with the commission of the offence described in the charge, then the Court should not accept the plea of guilty.

The appeals are, therefore, dismissed. Sentences to run from the date of conviction.

Appeals dismissed.