1960
June 1, 3, 7

GEORGHIOS *ALIAS* KOKOS P. MAKRIS PETINOS *v.* THE WELFARE DERARTMENT

[BOURKE, C.J., and EDWARDS, S.P.J.]

GEORGHIOS *ALIAS* KOKOS P. MAKRIS PETINOS,
Appellant,

v.

THE WELFARE DEPARTMENT,
Respondent.

(*Criminal Appeal No.* 2272).

Children—Wilful neglect—Essential ingredient of the offence—The Children Law, Cap. 352 (1959 *Edn.*) *section* 54 (1) *and* (2) (*a*).

The appellant was charged and convicted at the District Court of Limassol under section 54 (1) and (2) (*a*) of the Children Law, Cap. 352 (1959 Edn.) in that being legally liable to maintain his two children aged 7 and 5 years, respectively he " did neglect them in manner likely to cause injury to their health by failing to provide adequate food and clothing ". It is an essential ingredient of the offence that an accused should " wilfully neglect to provide for his children whom he is legally bound to maintain". This vital element does not appear in the charge. But irrespective of that, there was no evidence and no finding of such " wilful neglect ".

Appeal allowed.

Appeal against conviction.

The appellant was convicted on the 9th of May 1960 at the District Court of Limassol (Limnatitis, D.J., in Criminal Case No. 2584/60) of failing to maintain his children, contrary to section 54 (1) and (2) (*a*) of the Children Law, 1956, Cap. 352(1959 Edn.)and was sentenced to six months inprisonment.

The appellant in person.

M. S. Faiz for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court.

On the 3rd June, 1960, the appeal was allowed and on the 7th June, 1960, the Court proceeded to give their reasons, read by:

BOURKE, C.J. : On the 3rd June, 1960, we allowed this appeal, setting aside the conviction and sentence, and intimated that we would give our reasons later which we now proceed to do.

The appellant was charged with an offence under section 54 (1) and (2) (*a*) of the Children Law, 1956, in that being legally liable to maintain his two children aged 7 and 5 years, he did neglect them in a manner likely to cause injury to their health by failing during the period 1.3.60 to 26.3.60 to provide adequate food and clothing.

According to the finding, the appellant neglected to maintain his two children from 8.3.60 to 26.3.60. He admitted four previous convictions for a similar offence and was sen-

tenced to six months' imprisonment.

It appeared from what was stated by Crown Counsel as a result of our enquiry that there was some irregularity in the manner of laying the charge and in the prosecuting of the offence before the trial Court. The charge was signed by a Miss Iacovou who is apparently an Assistant Welfare Officer and the prosecution was conducted by a Mrs. Grimaldi who is also an officer of the Welfare Department and who, as Crown Counsel informs us, has not obtained a necessary authority to prosecute from the Attorney-General.

It is an essential ingredient of the offence that an accused should "wilfully" neglect to provide for children whom he is legally liable to maintain. There is, however, no allegation of this vital element in the charge and no finding of any wilful neglect. The evidence disclosed that the appellant was in prison on the 1.3.60, which is the initial date given in the charge for the commencement of the offence, and he was only released on the 8.3.60. In evidence the appellant testified that after his release from prison he was without work. Strangely enough no question was put to him in cross-examination ; but in answer to the Judge he said that he was working in a cinema and earning £2 or £3 a month. This was not pursued further and it was not elicited when he obtained this employment — the trial taking place on the 9.5.60. Even if the charge was without defect and had contained the allegation of *wilfully* neglecting the children, there is no evidence going to establish that the commission was wilful and deliberate. The appellant testified that he was without work and no suggestion was put to him that in the 18 days from the date he came out of prison to the 26th March he had any reasonable opportunity of obtaining employment, or had any source of means to enable him to support the children ; or that he failed to take other steps envisaged by section 54 (2) (*a*) to procure maintenance. It seemed to us to be highly unlikely that in the short period of just over a fortnight elapsing since he came from prison, the appellant would be able to establish himself in an earning capacity : that thought was not given to this aspect of the matter by the Authorities concerned seems evident from the extraordinary circumstance that the appellant was charged with the offence over a time that he was actually in prison, that is, from 1.3.60 to 8.3.60. From the evidence of the single witness for the prosecution, it appears that the children were in the care of their mother and it is to some extent reassuring to note that she did not testify that they were in fact suffering any injury to their health, though of course such evidence would be unnecessary to substantiate a charge of this kind having regard to the provision of section 54 (2) (*a*).

In the circumstances of the case we came to the conclusion that the conviction should not be allowed to stand.

Appeal allowed.