

1963
March 21

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ].

NICOLAS
CHRISTODOULOU
alias
FARFAROS
v.
THE
REPUBLIC

NICOLAS CHRISTODOULOU *alias* FARFAROS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 2619*)

Trial in criminal cases—Delay in prosecuting—In certain circumstances undue delay in prosecuting may affect the sentence to be imposed i.e. the trial Court may be justified in imposing a lighter sentence.

Criminal law—Sentence—It may be affected in certain cases by an undue delay in prosecuting the accused—Burglary and theft contrary to section 292 (a) of the Criminal Code, Cap. 154.

Appeal against sentence.

The appellant was convicted on the 18th February, 1963, at the Assize Court of Limassol (Criminal Case No. 13629/62) on one count of the offence of burglary and theft contrary to s. 292 (a) of the Criminal Code Cap. 154 and was sentenced by Loizou P.D.C., Limnatis and Malactos, D.JJ., to three years' imprisonment.

Appellant in person.

A. Frangos for the respondent.

Appeal dismissed.

The facts sufficiently appear in the judgment of the Court delivered by:

WILSON, P. : This is an appeal from the sentence imposed by the Assize Court at Limassol on February 18, 1963, in which the trial Court sentenced the accused to three years' imprisonment from that date. The accused had pleaded guilty to a charge of burglary and theft contrary to section 292 (a) of the Criminal Code, Cap. 154.

The appellant contends before us that he is innocent of the charge, but we are unable to investigate his statements. He ought to have laid this matter before the trial Court. In any event his appeal is against the sentence only.

After reviewing the facts as disclosed by the record, it appears that the sentence is not severe. In fact, it might have been a longer term of imprisonment than was imposed, having in mind the record of the accused. However, we are of the opinion, subject to what Mr. Justice Vassiliades will have to say, that no reasonable ground has been disclosed for the failure to prosecute the accused for this offence promptly. The offence was committed on the night of May 18, 1961 ; he was in custody early in the morning of May 19 ; but he escaped. However, he was again in custody on June 1, 1961, at which time he admitted to the Police his guilt. Then he was charged and he was convicted of stealing a bicycle on August 14, 1961, and was sentenced to one year's imprisonment on that day.

There is, therefore, no reasonable excuse for the failure to prosecute this man promptly and as a result, in so far as this offence is concerned, his term of imprisonment is running from February 18 of this year, instead of from some date about the middle of 1961. And I must express strong disapproval of the failure to prosecute this case promptly. Having said this, however, I must not overlook the seriousness of the offence committed nor the long record of the prisoner. Taking this into account and also taking into account that the sentence might well have been five years, instead of three, it is my view that we would not be justified in reducing the penalty in this case. The sentence should run from the date of conviction.

ZEKIA, J. : I agree.

JOSEPHIDES, J. : I agree.

VASSILIADES, J. (*dissenting*) : With all respect and deference to the decision of the majority of the Court regarding the result of the appeal, I am sorry to say that I find myself in disagreement. For the offence which this appellant has committed, he has been tried and sentenced by a competent Court. And the decision of this Court is that the sentence imposed by the trial Court is appropriate, in the circumstances, and must be affirmed. That covers the case, excepting for this : an unjustifiable and unexplained delay for over a year in bringing the appellant to justice for his crime.

I fully share the view expressed by the President of the Court, as to the desirability of bringing an offender to

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justice as early as this may be done. The present case demonstrates one of the adverse consequences of delay upon the accused person.

In this particular case, this particular offender, such as he may be, would have been tried, if prosecuted in due course, some time in the autumn of 1961. And I must presume that, for his offence, he would have received the present sentence of three years, which would either be made to run from the date of his conviction, or at the worst, from expiry of the sentence which he was then serving. According to the record before the Court, that would be at the latest some time in July, 1962. Instead of that, his sentence of three years' imprisonment is now running from his conviction in February 1963 ; and the result, in my mind, is obvious : this man is being prejudiced by a delay in the prosecution of the case against him, due to no fault on his part.

It is no consolation for him that the Police or other responsible officer have been rebuked for that. The practical way to counter-balance the adverse consequences of the delay would, in my opinion, be to reduce the sentence so that the appellant might be put in, more or less, the same position as he would have been if prosecuted in due course.

I thought it necessary to make these remarks, not only for the purposes of this case, but also for the authorities concerned to have it in mind that such delays may have serious practical consequences. I would be inclined to allow the appeal and reduce the sentence accordingly.

Appeal dismissed.