

NICOS ANTONIOU VOUDASKAS,

Appellant,

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Nicos
ANTONIOU
VOUDASKAS

THE REPUBLIC,

Respondent

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ΕΠΙΣΤΗΜΟΝ

(Criminal Appeal No 2881)

Criminal Law Sentence—Trespass with intent to annoy—The Criminal Code, Cap 154, section 280—Principles applicable in imposing sentence—The Court must take into consideration the seriousness of the offence as reflected by the punishment provided by the legislature- It must, also, give due regard to the protection which the general public are entitled to, against the dangers from persons mentally afflicted—And who only remember their mental affliction when about to receive sentence The mental condition of the accused must be taken into consideration also for purposes of institutional treatment while such persons shall be serving a sentence of imprisonment

Criminal Procedure Appeal - Sentence—Approach of the Court of Appeal to the question of sentence imposed by trial Courts—Principles restated Mental condition of the accused—Must be taken into account inter alia, for purposes of institutional treatment while such persons are serving a sentence of imprisonment Regard being had to the fact that persons mentally afflicted will have an excellent opportunity for the appropriate treatment while serving their sentences of imprisonment- See, also, under Criminal Law, above

Sentence Principles Applicable Appeal Appeal against sentence — Approach of the Court of Appeal to the question of sentences imposed by trial Court Principles restated —See, also, above under Criminal Law Criminal Procedure

Appeal Appeal against sentence See above

This is an appeal by one of the two accused convicted in this case by the Assize Court of Limassol for trespass with intent to annoy and sentenced to eighteen months' imprisonment each. The appeal is against sentence on the ground that the sentence imposed is manifestly excessive. Counsel for the appellant relied mostly on the mental condition and

other personal circumstances pertaining to the appellant, rather than the circumstances under which the offence has been committed.

The Court in dismissing the appeal, and directing that the sentence should run as from such dismissal :

Held, (1) the approach of the Court of Appeal to the question of sentence in an appeal of this nature, was stated in a number of cases ; and recently in the case of the *Attorney-General v. Vasiliotis and Another* (reported in this part at p. 20 *ante*). Quoting from a judgment in a previous appeal *Afxenti alias "Iroas" v. The Republic* (1966) 2 C.L.R. 116 at p. 118, the Court said :

“ The Court of Appeal will only interfere with a sentence so imposed (by the trial Court) if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law ; or that the Court, in considering sentence allowed itself to be influenced by matter which should not affect the sentence ; or if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case.”

(2) But in the present case the matter is so clear that we consider it unnecessary to say anything more about it in this connection. One can hardly find any mitigating circumstances in the facts of the crime committed.

(3) Where the mental condition of the accused, (which was taken into consideration by the trial Court), cannot be put forward by way of defence under the law, but is only relied upon in mitigation, the interest of a convicted person, in most cases, is better served by the prisons medical services, available to persons serving a sentence of imprisonment, than if the mentally afflicted person remains at large.

(4) The Court in imposing sentence, must take into consideration the seriousness of the offence in each case, as reflected by the punishment provided by the legislature ; and must give due regard to the protection which the general public are entitled to, under the law, against the dangers from persons who only remember their mental affliction when about to receive sentence for an offence ; and never take any step earlier, to cure themselves from a mental state which makes them dangerous to their environment.

(5) The mental condition of an accused person about to be sentenced, should be taken into account by the court, not only for purposes of belatedly intended treatment while the accused remains at large, but also for purposes of institutional treatment, while such persons are serving a sentence of imprisonment. This makes them more readily subject to the appropriate treatment, either in the prison hospital, or in the mental hospital, the services of which are always available for the benefit of persons confined in prisons under a sentence.

(6) We find no merit whatsoever in this appeal which must, therefore, be dismissed. The sentence to run according to law from today.

*Appeal dismissed. Sentence
to run from today.*

Cases referred to :

The Attorney-General v. Neophytos Vasiliotis and Another, reported in this Part, *ante*, at p. 20 followed :

Afxenti alias "Iroas" v. The Republic, (1966) 2 C.L.R. 116 at p. 118.

Appeal against sentence.

Appeal against sentence imposed on the appellant who was convicted on the 30th January, 1967, at the Assize Court of Limassol (Criminal Case, No. 211/67) on one count of the offence of trespass with intent to intimidate or annoy contrary to section 280 of the Criminal Code, Cap. 154, and was sentenced by Malachtos, P.D.C., Loris and Pikiis, D.J.J., to eighteen months' imprisonment.

L. Papaphilippou, for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal by one of the two accused convicted in this case, by the Assize Court of Limassol for trespass with intent to annoy ; and sentenced to eighteen months' imprisonment, each. It is an appeal against sentence, taken by the appellant in person from the Central Prisons on the ground that the sentence is manifestly excessive.

At the hearing before this Court, the appellant was represented by counsel, who relied mostly on the mental condition and other personal circumstances pertaining to the appellant, rather than the circumstances under which the offence was committed. These, indeed, afford very meagre grounds for argument against a sentence of eighteen months' imprisonment for the crime committed.

The facts of the case are, shortly, that two young men of about twenty-five years of age, one of them a married man, and the other engaged to be married, after spending their evening in different places of entertainment, broke into a dwelling house where they knew that a young girl was likely to be alone ; finding her asleep in her bedroom, the two trespassers carried the purpose of their midnight visit further, one of them by trying to keep the mouth of the sleeping girl closed with the palm of his hand, and the other by pressing her shoulders on the bed. The girl's screams for help in the fright which such unexpected attack must have caused her, made the assailants run away. They were both arrested, a few days later ; and one of them gave the whole story away, thus enabling the police to secure all the evidence required. They were both prosecuted ; and, eventually, committed to trial on charges for burglary, assault and criminal trespass.

In the Assize Court the two young men were defended by separate counsel, on whose advice, apparently, both accused pleaded not guilty to the counts for burglary, and assault occasioning actual bodily harm ; and guilty to the count for criminal trespass with intent to intimidate and annoy, preferred under section 280 of the Criminal Code.

Counsel for the Republic accepted this plea, and offered no evidence on the more serious counts, taking in this way the most favourable course for the accused. Convicted on their own plea, the accused, through their advocates, pleaded for leniency, putting forward in mitigation, personal reasons rather than circumstances connected with the offence. The appellant pleaded, moreover, his poor mental state on account of which he was considered as unfit for military service.

This is the main ground upon which, this morning before us, counsel on his behalf, argued appellant's case against the sentence imposed by the trial Court.

The matter at this stage, presents no difficulty. The approach of the Court of Appeal to the question of sentence

in an appeal of this nature, was stated in a number of cases ; and recently in criminal appeal No. 2870 of the *Attorney-General v. Neophytos Nicola Vasiliotis and another*, (reported in this part at p. 20 ante). Quoting from a judgment in a previous appeal (*Michael Afxenti alias "Iroas" v. The Republic*, (1966) 2 C.L.R. 116 at p. 118 the Court said :

"The Court of Appeal will only interfere with a sentence so imposed (by the trial Court) if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law ; or, that the Court, in considering sentence allowed itself to be influenced by matter which should not affect the sentence ; or if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case."

In the case before us, it is apparent, on the face of the record, that the appellant and his companion were very generously treated by the prosecution accepting their plea of guilty to the lightest count on the information, the punishment for which is imprisonment for two years. Quite rightly, in our opinion, the trial Court in imposing sentence on this count, took into consideration the circumstances under which the offence was committed ; and these make it obviously, a serious case. The matter is so clear that we consider it unnecessary to say anything more about it in this connection. One can hardly find any mitigating circumstances in the facts of the crime committed by the two young men in question, one of whom is the appellant before us.

The trial Court did take into consideration the personal circumstances of the appellant, including his mental condition, as described in the medical reports before the Court. The record shows that attention was drawn to these, by learned counsel, for the purposes of sentence.

Where the mental condition of the accused cannot be put forward by way of defence under the law, but is only relied upon in mitigation, the interest of a convicted person, in most cases, is better served by the prisons medical services, available to persons serving a sentence of imprisonment, than if the mentally afflicted person remains at large.

The Court in imposing sentence, must take into consideration the seriousness of the offence in each case, as reflected by the punishment provided by the legislature in

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the relative section of the Criminal Code ; and must give due regard to the protection which the general public are entitled to, under the law, against the dangers from persons who only remember their mental affliction when about to receive sentence for an offence ; and never take any step earlier, to cure themselves from a mental state which makes them dangerous to their environment. Their mental state is, usually, the cause of trouble to others, long before the commission of the offence for which they are about to receive sentence.

We take the view that the mental condition of an accused person about to be sentenced according to law, should be taken into account by the Court, not only for purposes of belatedly intended treatment while the accused remains at large (as often suggested by counsel on their behalf) but also for purposes of institutional treatment, while such persons are serving a sentence of imprisonment. This makes them more readily subject to the appropriate treatment, either in the prison hospital, or in the mental hospital, the services of which are always available for the benefit of persons confined in prison under a sentence.

In the circumstances of this case, we have no doubt that the appellant, whose counsel has properly and frankly admitted that his client has never before taken any treatment for his poor mental state, shall have an excellent opportunity for treatment while serving his sentence ; and for this purpose the term, perhaps, may be hardly long enough. But this is a medical matter into which we do not enter.

We find no merit whatsoever, in this appeal which must, therefore, be dismissed. The sentence to run according to law from today.

Appeal dismissed. Sentence to run from today.