

1967
Jan. 20,
Feb. 22

[TRIANTAFYLIDIS, STAVRINIDES AND HADJIANASTASSIOU, JJ.]

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GEORGHIOS
NICOLAOU
YIASOUMIS
v.
THE REPUBLIC

GEORGHIOS NICOLAOU YIASOUMIS,
Appellant,
v.
THE REPUBLIC,
Respondent.

(Criminal Appeal No. 2864)

Military Service—National Guard—Sentence—Sentence of imprisonment—Appeal against sentence—Stealing an automatic weapon, a stengun—Sections 255, and 262 of the Criminal Code Cap. 154 and section 5 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) as amended by Law 77 of 1965—Seriousness of offence—Principles regarding imposition of sentence—Grave personal and family difficulties of appellant at the material time—Sentence treated as excessive in the special circumstances of case—Supervision order—Section 34 of the Criminal Code (supra).

Criminal Law—Military Service—National Guard—Appeal against sentence—Stealing an automatic weapon, a stengun—See under “Military Service” above.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 8.11.66 at the Military Court, sitting at Nicosia, on one count of the offence of stealing an automatic weapon, a stengun, contrary to sections 255 and 262 of the Criminal Code, Cap. 154, and section 5 of the Military Criminal Code and Procedure Law 1964 (Law 40 of 1964) as amended by Law 77 of 1965, and was sentenced to two years' imprisonment.

Appellant, in person.

S. Georghiades, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :

TRIANTAFYLIDIS, J.: The appellant, a national guardsman, was convicted on the 8th November, 1966, by the Military Court at Nicosia, of the theft of an automatic weapon, a stengun, and was sentenced to two years' imprisonment. He has now appealed to this Court against the said sentence.

On the first day of the hearing of this appeal, at which the appellant appeared in person, without being represented by counsel, he told the Court that he did not steal the weapon in question with the intention of selling it for money, but that he stole it with a view to committing suicide because of the desperate situation in which he had found himself due to personal circumstances of his.

As a matter of fact at the trial of the appellant before the Military Court, at which he was represented by counsel, it was contended on his behalf that he had not intended to sell the weapon, and a vague reference was made to certain family difficulties of his ; but nothing more was said then about such difficulties and it is clear from the comments of the trial Court that in passing sentence it took the view that the appellant had stolen the weapon with the sole object of selling it.

In actual fact the appellant eventually did not sell the stolen weapon but, on the contrary, he broke it up into its various component parts and threw it down a well ; and in order to recover it therefrom, the police had to drain the well and search for the weapon's various parts at the bottom of the well. In view of this and of what the appellant told the Court, as above, we decided to adjourn the hearing of the appeal in order to obtain more information about the family and other personal circumstances of the appellant at the material time. We requested, for the purpose, a social investigation report and a report by the Welfare Officer at the Central Prisons.

From the said reports, which were read today at the resumed hearing of this appeal, it appears, indeed, that at the time when the appellant stole the stengun he was facing grave marital difficulties, he had an involvement with his sister-in-law, he was not in good relations with his parents due to financial matters and so he was definitely in the grip of a severe psychological upheaval. He was also suffering from a stomach ulcer, a thing which must have made his condition even worse.

It appears, further, that the appellant has made good progress in prison towards mending his ways and facing life in a constructive manner. His wife has, in the meantime, given birth to their first child, a son.

One cannot help but feel sorry for the plight of the appellant, even though some of his troubles were of his own making ; and in this connection it must not be lost sight of that the appellant is by no means a first offender, having already been placed under probation for a stealing offence in the past.

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The stealing of a military weapon by a national guardsman, and, in general, the unlawful use of a firearm, is a very serious matter ; as it has often been stressed by this Court such offences have to be punished severely and there is not much room for leniency in dealing with them at times such as the present.

On the other hand it is a cardinal principle of criminal justice that the sentence to be imposed must be fitted to the circumstances of each particular case, and thus to offences of more or less equally severe nature there may have to be imposed sentences varying in severity because of the circumstances in which each such offence has been committed.

In the present case we are inclined to the view that the grave personal and family difficulties which were besetting the appellant at the material time contributed a lot to his irresponsible behaviour which has landed him in prison. Unfortunately the trial Court did not have the opportunity of weighing duly the extenuating effect of such difficulties, as they were never placed properly before it. Had the trial Court known what we now know it would no doubt have been inclined to treat the appellant less severely than it did when proceeding on the basis that the appellant had stolen the weapon concerned with the sole motive of selling it to others.

As already stated, the appellant has been reforming quite satisfactorily while in prison. He is a young man on the threshold of life, and we do think that the term of imprisonment imposed on him should be long enough to help him mend his ways without, however, depriving him of having, soon enough, another chance in life.

For all these considerations, and taking into account the genuine remorse shown by the appellant, we have decided, in spite of the severity of the offence of which he has been convicted, to treat the sentence imposed on the appellant as excessive in the special circumstances of his case and reduce it to one of a year's imprisonment as from the 8th November, 1966 ; we are making at the same time, a supervision order, under section 34 of the Criminal Code, Cap. 154, which shall remain in force for three years after appellant's release from prison.

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Appeal allowed. Sentence reduced to one of a year's imprisonment. Supervision order made as above.