

FRANCIS KENNETH SMITH AND ANOTHER,
Appellants,

FRANCIS
KENNETH
SMITH
AND
ANOTHER
v.
THE POLICE

v.

THE POLICE,

Respondents.

(*Criminal Appeals No. 3133,
3134—consolidated*).

Sentence—Stealing and malicious injury to property—Sections 252, 262 and 324(1) of the Criminal Code, Cap. 154—Two years' imprisonment on each count to run concurrently—Undue weight given by the trial Court to the factor of damage and not due weight given to other mitigating considerations—Sentence manifestly excessive and wrong in principle—Reduced on appeal to terms of one year's imprisonment on each count to run concurrently.

Appeal—Sentence—Appeal against sentence—Sentence manifestly excessive and wrong in principle—Sentence reduced on appeal—See further supra.

Criminal law—Stealing—Causing malicious damage to property—Sentence—See supra.

The two appellants, aged 19 and 20 years, respectively, are members of the crew of the British warship "Bulwark" and they were on shore leave in Limassol town. In the early hours of the 9th October 1969, they took and navigated away a motor-boat "Anna II" valued at £12,000 the property of Messrs. Ayvaliotis Co. Ltd. Being apparently under the influence of drink, they ran aground on some rocks with the result that the motor-boat sank and became a total loss. Charged with stealing and causing malicious damage to the said motor-boat, the appellants pleaded guilty and were sentenced to two years' imprisonment on each count to run concurrently.

They appealed against sentences on the ground that they were manifestly excessive and wrong in principle. Allowing the appeal and reducing the sentences to a term of one year's imprisonment the Court :—

Held, (1). The sentences imposed are, indeed, in the circumstances manifestly excessive and, also, wrong in principle, in the sense that undue weight was given to the factor of damage

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to the boat and not due weight given to other mitigating circumstances and considerations such as : (a) the ages of the appellants (19 and 20 years respectively) ; (b) their past good record ; (c) that they did what they have done in the course of foolish behaviour whilst being under the influence of drink ; (d) and that being members of the British navy, their naval careers are bound to suffer most severely if not completely jeopardized.

(2) We have therefore, decided to reduce the sentences to one year's imprisonment on each count, to run concurrently.

Appeals against conviction dismissed. Appeals against sentence allowed.

Appeals against conviction and sentence.

Appeals against conviction and sentence by Francis Kenneth Smith and Richard Hubert Owen who were convicted on the 15th October, 1969, at the District Court of Limassol (Criminal Case No. 14938/69) on two counts of the offences of stealing and malicious injury contrary to sections 255, 262, 20 and 324 (1), respectively, of the Criminal Code, Cap. 154, and were sentenced by Boyiadjis, Ag. D.J., to 2 years' imprisonment each on each count, the sentences to run concurrently.

S. McBride, for the appellants.

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

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: The appellants in these two criminal appeals, which have been consolidated—as they relate to the same offences—were sentenced, by the Limassol District Court, to two years' imprisonment each, on two counts, one of stealing and one of malicious injury to property, the sentence to run concurrently.

The offences in question, in respect of which the appellants pleaded guilty, were committed in the following circumstances :

On the evening of the 8th October, 1969, a motor-boat, "Anna II", valued at £12,000 and being the property of Messrs. Ayvaliotis Co. Ltd. was anchored at the Limassol Port.

The two appellants, aged 19 and 20 years respectively, are members of the crew of the British warship "Bulwark" and they were on shore leave in Limassol town.

In the early hours of the morning of the 9th October, 1969—at about 2.50 a.m.—they took and navigated away the said motor-boat.

According to their versions, their intention was to return to their ship ; they did not, however, go to their ship on the motor-boat but, being apparently, at the time, under the influence of drink, they ran aground on some rocks with the result that the motor-boat sank and became a total loss.

Before this Court they have appealed both against their convictions—under section 135 of the Criminal Procedure Law (Cap. 155)—and against their sentences.

Counsel for the appellants, acting we think quite properly, decided, eventually, to abandon the appeals against conviction, in view of the pleas of guilty of his clients and the circumstances in which such pleas were entered before the trial Court, at which the appellants were represented by counsel, but not the one who is appearing for them today.

So, we only have to deal with the appeals against sentences.

Counsel for the appellants has stressed that the trial Court was unduly influenced by the magnitude of the damage caused by these two young offenders—(the motor-boat being worth, as already stated, about £12,000) and he has argued, too, that the Court has failed to take sufficiently into account other relevant factors, such as the ages of the appellants, their past good record, that they did what they have done in the course of foolish behaviour while being under the influence of drink, and that, being members of the British Navy, their naval careers are bound to suffer most severely, if not completely jeopardized. He, also, stated that the two appellants regretted very much what they did.

Counsel for the respondents has conceded that the sentences imposed on the appellants are, indeed, severe, but he has argued that they were necessary because of their deterrent effect, in order to ensure protection of property against crimes of such a nature.

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We take the view that the sentences, which were imposed on the appellants, are, indeed, in the circumstances manifestly excessive and, also, wrong in principle, in the sense that undue weight was given to the factor of damage caused and not due weight was given to other mitigating considerations. We have, therefore, decided to reduce the sentences to one year's imprisonment on each count, to run concurrently.

In the result the appeals against convictions are dismissed and the appeals against sentence are allowed ; the sentences to run from the date of the convictions of the appellants.-

Appeals against conviction dismissed. Appeals against sentence allowed.