

GEORGHIOS IOANNOU SKOULLOU *alias* "KOTSIRAS",
Appellant,

GEORGHIOS
IOANNOU
SKOULLOU
alias

v.

"KOTSIRAS"

THE POLICE,

Respondents.

v.
THE POLICE

(Criminal Appeal No. 3060).

Criminal Law—Sentence—Sentence of imprisonment—Six months' imprisonment for stealing contrary to sections 255 and 266(b) of the Criminal Code, Cap. 154—Appellant young and first offender—Appellant's background not before the trial Court—Social Investigation Report highly desirable—In the circumstances of this case a sentence of imprisonment would be desirable only if it were to serve any of the purposes of such a sentence—And if imprisonment were unavoidable—But the trial Judge could not have properly decided on this point without having fully before him a social investigation report showing the accused's background—Sentence of imprisonment set aside and a probation order for one year under the Probation of Offenders Law, Cap. 162 substituted therefor.

Sentence—Appeal against sentence—Young offenders—First Offenders—Sentence of imprisonment desirable only if it is unavoidable—Social Investigation Report—Desirability that trial Judges should have before them such a report if they are minded to impose a sentence of imprisonment.

Young Offenders—See above.

First Offenders—See above.

Imprisonment—Sentence of—Young Offenders—First Offenders—Social Investigation report—See above.

Social Investigation Report—Desirability—See above.

Upon a plea of guilty to a charge for stealing from a dwelling house a transistor of the value of £11, contrary to sections 255 and 266(b) of the Criminal Code Cap. 154, the trial Judge took the view that "despite the fact that the accused (a young man of 24) is a first offender", the proper punishment to be imposed in the circumstances of this case was one of six

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months' imprisonment. The appellant took the present appeal against conviction and sentence. In the course of the argument counsel abandoned the appeal against conviction.

Allowing the appeal the Court—

Held, (1). Even if we take the position from the recorded plea we are still left with the undisputed surrounding circumstances which make the case of such a nature that a sentence of imprisonment is questionable.

(2) If the trial Judge was minded to impose a sentence of imprisonment in such circumstances, it was highly desirable that before doing so he should have before him a social investigation report as suggested in the cases to which we have been referred by counsel for the appellant: *Stylianou and Others v. The Republic*, 1961 C.L.R. 265; *The Attorney-General v. Stavrou and Others*, 1962 C.L.R. 274 at p. 277.

(3) In the circumstances of this case for a first offender of the age of the appellant a sentence of imprisonment would be desirable only if it were to serve any of the purposes of such a sentence; and if imprisonment were unavoidable. We take the view that the trial Judge should not have decided on this point without having fully before him the background of the accused; and that an investigation report was highly desirable in the circumstances. In the absence of it we are inclined to think that the sentence imposed (six months' imprisonment) should not be sustained and must be set aside.

(4) As the appellant has served part of the sentence imposed on him (about two and a half months now) no question arises of a fresh sentence of imprisonment in the present case. We think, therefore that we should not now at this stage call for a social investigation report and that the best course is to make a probation order for one year on the usual terms and conditions under the *Probation of Offenders Law*, Cap. 162 upon the signing of which the appellant shall be released. The supervising Court to be the District Court of Kyrenia.

Appeal against sentence allowed; sentence of imprisonment set aside; probation order made in the terms as above.

Cases referred to :

Stylianou and Others v. The Republic, 1961 C.L.R. 265 ;

The Attorney-General v. Stavrou and Others, 1962 C.L.R.
274 at p. 277.

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Appeal against conviction and sentence.

Appeal against conviction and sentence by Georghios Ioannou Skoullou *alias* " Kotsiras " who was convicted on the 14th November, 1968, at the District Court of Kyrenia (Criminal Case No. 1178/68) on one count of the offence of stealing from a dwelling house contrary to sections 255 and 266 (b) of the Criminal Code, Cap. 154, and was sentenced by Demetriades, D.J., to six months' imprisonment.

L. N. Clerides, for the appellant.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: Upon a plea of guilty to a charge for stealing, and a sentence of six months' imprisonment imposed upon him by the trial Judge, the appellant took the present appeal against conviction and sentence.

In the course of the argument, learned counsel abandoned the appeal against conviction. And having heard the appeal until that stage, we have no doubt, in our mind that counsel took the proper course, in the circumstances. So, what is left is the appeal against sentence. It is a sentence of six months' imprisonment imposed on the appellant, a young man of 24 and a first offender, for stealing from a dwelling house a transistor of the value of £11.

What was stated at the trial Court on his behalf, in mitigation, was that the appellant went into a co-villager's house, trusting that the latter would not mind as they were on friendly terms, took the transistor to his own house and when interrogated by the police later on the same day, admitted having taken the transistor, giving the explanation that he did not think that he would be misunderstood for taking it. When he realized that he did something wrong from the presence of the police, the appellant expressed his apologies ; same as he did later in Court.

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This plea was, in a way, inconsistent with the plea of guilty for stealing ; but we have to take the position from the plea on the record, as the appeal against conviction has been abandoned ; and we are now dealing with the appeal against sentence. The resulting position presents some difficulty ; but there are certain facts which throw light on the matter : there is no allegation that the transistor was found concealed ; it is conceded by the prosecution that the appellant, immediately upon being questioned by the police, admitted having taken it ; it is not disputed that he explained his conduct by his friendly relations with the people living in the house ; and that he said that he did not think that he would be "misunderstood". In the circumstances, even if we take the position from the recorded plea, we are still left with the undisputed surrounding circumstances which make the case of such a nature that a sentence of imprisonment is questionable.

The trial Judge, according to his note, taking into consideration that the offence of stealing from a dwelling house is punishable with imprisonment of five years, was of the opinion that appellant's friendly relations with the complainants made the case more serious, because the appellant took advantage of that fact. And the Judge took the view that "despite the fact that the accused is a first offender", the proper punishment to be imposed was one of imprisonment.

With all respect to the learned Judge, we think that if he was minded to impose a sentence of imprisonment in such circumstances, it was highly desirable that before doing so he should have before him a social investigation report, as suggested in the cases to which we have been referred by counsel for the appellant : *Stylianou and Others v. The Republic*, 1961 C.L.R. p. 265 ; and the other case of the *Attorney-General v. Stavrou and Others*, 1962 C.L.R. 274 at p. 277.

The question now is whether this court has sufficient reasons for interfering with the sentence imposed by the trial Court or not. We certainly think that, in the circumstances of this case, for a first offender of the age of the appellant, a sentence of imprisonment would be desirable only if it were to serve any of the purposes of such a sentence ; and if imprisonment were unavoidable. We take the view that the learned trial Judge should not have decided on this point without having fully before him the background of the accused ; and that an investigation report

was highly desirable in the circumstances. In the absence of it, we are inclined to think that the sentence should not be sustained ; and we are unanimous in our decision to set it aside.

The question now arises what is the appropriate sentence in the circumstances? And whether we should now, at this stage, call for an investigation report. We think that as the appellant has served part of the sentence of imprisonment imposed on him (about two and a half months now) no question arises of a fresh sentence of imprisonment in the present case ; and that the best course is to make a probation order for one year, on the usual terms and conditions, under the Probation of Offenders Law, Cap. 162, upon the signing of which the appellant shall be released. The supervising Court, to be the District Court of Kyrenia.

Appeal against sentence allowed. Sentence of imprisonment set aside and Probation Order made in above terms.

Appeal against sentence allowed ; sentence of imprisonment set aside ; probation order made in above terms.

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