ANDREAS EVANGELOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3149).

Sentence—One year's imprisonment for shop-breaking—Section 294 (a) of the Criminal Code, Cap. 154—Appellant a young man of 25, first offender—No Social Investigation Report put before the trial Judge as it ought to—Sentence reduced to a term of six months from conviction, in the light of the information contained in the Social Investigation Report ordered by the Supreme Court.

Sentence—Sentence of imprisonment—Principal factors to be taken into consideration in passing sentence—Character and reform of the offender—Protection of the community—Deterrence—Effect of imprisonment on prisoner's dependants.

Social Investigation Report—Need of—Supra.

Appeal—Sentence—Approach of the Court of Appeal—Principles upon which the Court of Appeal will interfere with sentences—Restated—Primary responsibility rests on trial Courts.

Cases referred to :

Attorney-General v. *Stavrou and Others*, 1962 C.L.R. 274 ;

Skoullou v. *The Police* (1969) 2 C.L.R. 27 ;

Georghiou v. *The Police* (reported in this Part at p. 41 *ante*) ;

Kougkas v. *The Police* (1968) 2 C.L.R. 209 ;

Hapsides v. *The Police* (1969) 2 C.L.R. 64.

Per curiam : Since *Stavrou* case (*supra*) this Court has repeatedly stressed the need of information concerning the accused, especially when he happens to be of young age and the Court considers that the circumstances appear to call for a sentence of imprisonment (see *Skoullou's* and *Georghiou's* cases *supra*).

The facts sufficiently appear in the judgment of the Court allowing this appeal against sentence and reducing the sentence of one year's imprisonment to a term of six months to run from conviction, with an order binding the appellant over in the sum of £100 for two years to keep the peace.

Appeal against sentence.

Appeal against sentence by Andreas Evangelou who was convicted on the 2nd February, 1970, at the District Court of Nicosia (Criminal Case No. 18748/69) on four counts of the offence of shop-breaking contrary to section 294 (*a*) of the Criminal Code, Cap. 154 and was sentenced by Stavrinakis, D.J., to one year's imprisonment on each count, the sentences to run concurrently.

G. Koumas, for the appellant.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant, a young man of 25, was convicted in the District Court of Nicosia on February 2, 1970, upon a charge containing four counts for breaking and stealing various small sums, to which the appellant pleaded guilty.

After taking the facts from the police officer conducting the prosecution and after hearing appellant's apology, the trial Judge came to consider the question of sentence. The appellant did not wish to be represented by an advocate ; and his plea was based on a frank and complete admission of the facts ; his full repentance ; and the assurance that he will never again commit a similar or any other offence.

The short facts of the case are as follows : The appellant, who is the supporter of a family consisting of a wife (of about his own age) and a very young child (14 months' old) found himself under financial difficulties in running his small coffee-shop, upon the earnings of which the living of his family depended. He fell in arrears with the rent of the shop ; and his daily earnings were not always sufficient to meet the daily expenses for the maintenance of the family. His landlord was a grocer running his business in the adjacent shop.

While serving coffees in the landlord's shop, the appellant observed that there was, usually, loose cash in the grocer's drawer ; and yielded to the temptation of removing, when opportunity presented itself, a few notes. The successful outcome of the first attempt led to the second a few days later ; and again a similar success led the appellant to the use of a duplicate key opening the padlock of the grocery door. The shop-keeper reported the matter to the police ; and discussed with them his suspicions which led to the discovery of appellant's method by the use of marked banknotes which were found in appellant's possession.

When called to the police, the appellant soon made a clean breast of the whole affair giving particulars of how he committed the shop-breakings and the thefts. He also admitted the stealing of a cigarette lighter from another shop which had not been reported to the police. When charged at the station, the appellant admitted all the offences charged ; and, eventually, he dispensed with the services of his advocate who had entered for him a plea of not guilty ; and by leave of the Court, he pleaded guilty to the offences in this case as well as to that charged in the case for the cigarette lighter.

After stating the facts, the prosecuting officer informed the Court that the appellant was a first offender. His plea in mitigation was an appeal for leniency based on the admission that he had committed a very grave mistake ; and that finding that he could not make a living for his family from the coffee-shop he gave it up and took employment as a labourer in a bakery the wages of which were the only means of support for the young family.

The learned trial Judge was apparently impressed by the fact that the appellant had developed what the Judge described as a " system " for the commission of these offences ; and notwithstanding that the accused was a first offender, the Judge took the view that he could not " consider any other sentence than imprisonment as appropriate in the circumstances " ; he sentenced the appellant to one year's imprisonment on each count to run concurrently.

On the first hearing of the appeal, learned counsel for the appellant referred us to the *Attorney-General* v. *Stavrou and Others*, 1962 C.L.R. 274 and submitted that a social investigation report was necessary in dealing with the question of sentence in this case, as the background of the appellant was a material consideration in deciding whether a sentence of imprisonment was unavoidable.

The appeal was, therefore, adjourned for three weeks to enable the welfare services to carry out the required investigation and submit their report. It was filed in due course with copies to both sides. Same as in most cases the report contains useful information regarding the upbringing of the appellant ; his schooling ; his different apprenticeships ; and, eventually, his marriage to his present wife, a working young woman from a poor family with whom the appellant shares in harmony the difficulties and pleasures of the couple's joint adventure in life.

Since the *Stavrou* case (*supra*) this Court has repeatedly stressed the need of information concerning the accused, especially when he happens to be of young age and the Court considers that the circumstances in which the offence was committed, appear to call for a sentence of imprisonment. We may refer to *Georghios Skoullou* v. *The Police* (1969) 2 C.L.R. 27 ; and *Michael Georghiou* v. *The Police* (reported in this Part at p. 41 *ante*).

We have made it clear in several cases that this Court will only interfere with a sentence imposed by the trial Court, which carries the primary responsibility in imposing sentence, when it is made to appear on appeal that there are sufficient reasons for intervention ; or when the sentence appears to be manifestly excessive or manifestly inadequate. (See *Michael Kougkas* v. *The Police* (1968) 2 C.L.R. 209 ; *Hapsides* v. *The Police* (1969) 2 C.L.R. 64).

In the light of all the circumstances as they are now before us, including the information in the social investigation report regarding the appellant whose character and reform is one of the principal factors to be taken into consideration in deciding what is the appropriate sentence, we are unanimously of the opinion that had this information been placed before the trial Judge he might not have imposed a sentence of one year's imprisonment on this particular offender. Together with considering the protection of the community from theft and the deterrent effect which a sentence should have, the reform of a particular offender, and the effect of imprisonment on his dependants, have to be taken into account in making the decision whether a sentence of imprisonment is unavoidable in a case.

In all the circumstances of this case, we take the view that the appeal must be allowed and that the sentence of imprisonment should be reduced to six months from the date of

conviction, coupled with a bond in the sum of £100 with a surety (appellant's wife would seem to be a sufficient surety in this case) for two years to keep the peace and be of good behaviour. This, we hope, will enable the welfare services to follow up and assist the appellant with advice and guidance after his release from prison where the welfare officer will have sufficient opportunity and time to prepare the appellant for his responsibilities after release.

Appeal allowed, sentence reduced to six months' imprisonment from conviction. In addition appellant to be bound over in £100 with a surety (his wife will do) for two years to keep the peace and be of good behaviour. Order accordingly.

Appeal allowed.