[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

ANTONIS CHRISTOFIDES,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3168).

Sentence—Five years' imprisonment for burglary contrary to section 292 (*a*) *of the Criminal Code, Cap.* 154—*Appellant's long list of previous convictions main reason for imposing severe sentence—Sentence imposed was the appropriate one—Sentence, however, to run from conviction, directions for the purpose given under section* 147 (1) *of the Criminal Procedure Law, Cap.* 155—*See further* infra.

Appeal—Sentence—Approach of the Court of Appeal to appeals against sentence—Principles well settled.

Cases referred to :

Iroas v. *The Republic* (1966) 2 C.L.R. 116, at p. 118 *followed* ;

Pullen v. *The Republic* (reported in this Part at p. 13 *ante* ; at pp. 16–17 *followed*).

The facts sufficiently appear in the judgment of the Court, dismissing the appeal against a sentence of five years' imprisonment for burglary which was held to be an appropriate one in the circumstances of this case especially in view of the long list of the appellant's previous convictions.

Appeal against sentence.

Appeal against sentence by Antonis Christofides who was convicted on the 11th May, 1970 at the Assize Court of Nicosia (Criminal Case No. 5839/70) on two counts of the offences of burglary and possessing housebreaking instruments by night contrary to sections 292 (*a*) and 296 (*c*) (i), respectively, of the Criminal Code, Cap. 154, and was sentenced by A. Loizou, P.D.C., Mavrommatis and Stylianides, D.JJ., to five years' imprisonment on the first count and no sentence was passed on him on the second count.

Appellant appearing in person.

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

The following judgment was delivered by :

VASSILIADES, P. : The appellant was convicted in the Assize Court of Nicosia, on May 11, 1970, of the crime of burglary contrary to section 292 (*a*) of the Criminal Code, Cap. 154 ; and was sentenced to five years' imprisonment. He took the present appeal against sentence soon after his admission to the Central Prison. The appeal is founded on the ground that the sentence imposed by the trial Court is manifestly excessive.

The appellant was practically caught red-handed when leaving one of the dwelling apartments in a block of flats in Nicosia, in the early hours of the night of March 12, 1970. He admitted that he entered the apartment in question with intent to steal ; and that he gained entry by opening a closed back door. While searching for spoils, the appellant noticed someone on a bed and ran away. He was chased by the person in question, and was caught on the staircase by a policeman in civilian clothes, who knowing the appellant, suspected foul play and when he lost sight of him, the policeman followed the appellant into the block of flats.

Arrested on the spot, the appellant was found in possession of housebreaking instruments. He made a statement to the police admitting the offence ; and he was eventually committed for trial by an Assize Court. He was charged there on May 11, 1970, for burglary contrary to section 292 (*a*) and for possessing housebreaking instruments by night contrary to section 296 (*c*) of the Code, Cap. 154 ; he pleaded guilty to both counts, and was convicted accordingly.

At the trial, the appellant was in the hands of his advocate whom the Court appointed for him at appellant's request, in view of the seriousness of the crime charged. After taking the facts from the prosecuting counsel who also presented a list of 27 previous convictions of the appellant, and after hearing the advocate of the accused in mitigation, the trial Court considered the question of sentence. Giving their reasons for it in a considered judgment, the trial Court imposed a term of five years' imprisonment on the first count and no sentence on the second.

The main reason for imposing the sentence in question, was apparently the appellant's long list of previous convictions.

> " The past record of the accused (the trial Court say) and his numerous convictions, lead us to the conclusion that this is no longer the case of a man making a mistake who should be treated with the hope of reform, but a clear case of imposing such a sentence as will protect society from a habitual offender, though hope for reform should never be lost. It is up to the accused at his age, to reflect, if he so wishes, on his past life and change his ways ."

The past record of the appellant is indeed bad. He has 27 convictions since 1949, eight out of which, during the last 10 years. The last is a conviction for burglary in June, 1967, for which he received a term of three years' imprisonment. He has 12 convictions for offences connected with stealing. His complaint in this case, is that the policeman did not intervene earlier to prevent him from committing the offence. He apparently believes that prevention is better than cure. He may have a point there ; but at this stage his case is one of cure, and we have to deal with it as such.

The approach of this Court to appeals against sentence is well settled in a line of cases. The responsibility for measuring the appropriate sentence, must rest primarily with the trial Court, for reasons which need no elaboration here. Sentencing is indeed a difficult and delicate function of the Court in the exercise of its criminal jurisdiction. It must be performed with all due care ; but this Court will not interfere with a sentence on appeal, unless there are sufficient reasons for such intervention. We shall only refer to two cases out of many on the point : *Michael Afxenti Iroas* v. *The Republic* (1966) 2 C.L.R. 116, at p. 118 ; and *Pullen* v. *The Republic* (reported in this Part at p. 13 *ante* ; at pp. 16–17). No such reason has been shown in the instant appeal ; which must therefore be dismissed. The severity, however, of the sentence imposed, justifies, we think, directions under section 147(1) of the Criminal Procedure Law, Cap. 155, for the sentence to run from conviction.

Appeal dismissed. Sentence to run from conviction.

Appeal dismissed.