

[TRIANAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

1971
May 8

MICHALAKIS KOUTSIDES,

Appellant,

MICHALAKIS
KOUTSIDES

v.

v.

THE POLICE

THE POLICE,

Respondents.

(*Criminal Appeal No. 3245*).

Sentence—One year's imprisonment for stealing fruit contrary to section 265(1) of the Criminal Code, Cap. 154—Imposed under section 8 of the Probation of Offenders Law, Cap. 162 on the basis of wrong assumption about breach of Probation Order—In any event, said sentence manifestly excessive punishment in view of the very young age of the Appellant, the insignificance of the offence and of the fact that due to his unfortunate family history the Appellant had not been given a proper chance to shape his life better—Sentence of imprisonment substituted by a new Probation Order.

Young offenders—See supra.

Probation of Offenders—Probation Order—Section 5 of the Probation of Offenders Law, Cap. 162—Breach of such order—Section 8 of the said Law.

Stealing fruit contrary to section 265(1) of the Criminal Code, Cap. 154—Sentence—See supra.

The facts of this case sufficiently appear in the judgment of the Court whereby they allowed this appeal against a sentence of one year's imprisonment and substituted therefor a new Probation on two grounds: (1) The trial Court imposed the sentence appealed against on the basis of a wrong assumption regarding alleged breach of a probation order, and (2) in any event the sentence of one year's imprisonment was a manifestly excessive punishment in the circumstances of this case.

Appeal against sentence.

Appeal against sentence by Michalakis Koutsides who was convicted on the 20th March, 1971 at the District Court of

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Nicosia (Criminal Case No. 10227/70) on one count of the offence of stealing contrary to section 265(1) of the Criminal Code Cap. 154 and was sentenced by Papadopoulos, D.J. to one year's imprisonment.

D. Papachrysostomou, for the Appellant.

Cl. Antoniadis, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES, P.: The Appellant in this case is a young person who, having been born on the 15th June, 1954, will be seventeen years old next month.

On the 9th September, 1970, he appeared before the Nicosia District Court in relation to a charge (in Criminal Case No. 10227/70) of stealing fruit, contrary to section 265(1) of the Criminal Code (Cap. 154). The Appellant pleaded guilty and on the 10th October, 1970, he was put on probation for two years; he was, also, ordered to pay 750 mils by way of compensation for the stolen fruit.

The probation order, as made under section 5 of the *Probation of Offenders Law (Cap. 162)*, stated that the Appellant should reside in the District of Nicosia while on probation and that he should obey the instructions of the probation officer regarding his conduct and manner of living, that he would visit such officer or accept visits from him as the officer might determine, and that he should report immediately to the probation officer any change of residence or of place of work.

The Appellant was instructed by the probation officer to reside at the Strovolos Hostel—which is an institution for persons such as the Appellant—but he absconded therefrom. As a result, on the 13th March, 1971, an application was made to the Nicosia District Court that the criminal case in respect of the theft of fruit by the Appellant be dealt with further, because of non-compliance with the requirements of the probation order. In an affidavit sworn in support of such application it was stated that it was “a special condition” of the probation order that the Appellant should “reside at Strovolos Hostel” and that he had refused to comply with this special condition.

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We have no doubt that the probation officer acted in all good faith, because he must have all along contemplated that the Appellant should reside at the Strovolos Hostel; but, on the other hand, it is quite clear that no such special condition was included in the probation order; and the express requirement in such order that the Appellant should report to the probation officer any change of residence is an indication that the Appellant was not to reside at the Hostel and that the instructions which the probation officer was empowered to give to the Appellant, regarding his conduct and manner of living, were not to include a requirement that the Appellant should reside at such Hostel.

Thus, when the matter came up before a Judge of the Nicosia District Court, other than the one who had made the probation order, it was presented on a wrong basis. The Judge, in the light of the application before him and the affidavit in support thereof, proceeded to sentence the Appellant, apparently under section 8 of Cap. 162, to one year's imprisonment for the offence of stealing fruit; his reasons for doing so being as follows:— “ In my opinion it would be to the interest of both the accused and society to send him to prison to enable him to learn a trade and have certain supervision”.

We quite agree that it was in the interest of the Appellant and of society that he should be dealt with, under the law, in a manner which would benefit him and at the same time would serve the wider interests of society in general; we do think, however, that the sentence of one year's imprisonment, which was imposed on the basis of a wrong assumption—as already explained herein—was, in any case, a manifestly excessive punishment, especially in view of the insignificance, in the circumstances, of the offence for which he was punished, as well as because of his very young age and of the fact that due to his unfortunate family history he had not been given a proper chance to shape his life better.

We are of the opinion, having taken into account, too, that the Appellant has been by now in prison for a month and a half, that the proper course is to substitute for the sentence of imprisonment a new probation order for two years from today, on the same terms as the previous one, but containing, too, a special condition that the Appellant should reside, initially, at the Strovolos Hostel for as long as the probation officer may deem necessary and that he will absent himself

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therefrom only after being given permission for the purpose by the probation officer.

We hope that the Appellant will take seriously this second opportunity of mending his ways while being on probation.

In the result, this appeal is allowed and the sentence is varied accordingly.

Appeal allowed.