[TRIANTAFYLLIDES, P., STAVRINIDES, A. LOIZOU, JJ.]

GARY JAMES EDWARDS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3277).

Sentence—Six months' imprisonment imposed on a foreigner for office breaking with intent to steal—Section 295 *of the Criminal Code Cap.* 154*—Sentence—Assessment—Need to protect the community—And need to make the sentence be the proper one for the particular offender—Assessment of sentence being primarily the task of trial Courts—Approach of the Supreme Court to appeals against sentence—In the light of all relevant considerations no reason requiring Supreme Court to interfere with sentence imposed—Such sentence being in itself a very lenient one cannot be reduced because of the fact that the trial Judge has misinterpreted the attitude in Court of the Appellant—See further* infra.

Foreigner—Sentence of imprisonment—The fact that the Appellant is a foreigner is not a consideration which could lead this Court to reduce on appeal what is otherwise an appropriate term of imprisonment for the specific offence and the particular offender.

Appeal—Sentence—Approach of the Supreme Court to appeals against sentence.

Breaking—Office breaking with intent to steal—Section 295 *of the Criminal Code Cap.* 154*—Sentence—See* supra.

The facts sufficiently appear in the judgment of the Court dismissing this appeal against a sentence of six months' imprisonment imposed by the trial Court on a charge against a foreigner for office breaking with intent to steal contrary to section 295 of the Criminal Code Cap. 154.

Cases referred to:

Wheeler and Others v. *The Police,* 1964 C.L.R. 83, at p. 87;

Marley v. *The Republic,* 1964 C.L.R. 143, at p. 147.

1971
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GARY JAMES EDWARDS
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Appeal against sentence.

Appeal against sentence by Gary James Edwards who was convicted on the 3rd August, 1971 at the District Court of Limassol (Criminal Case No. 6348/71) on one count of the offence of office breaking with intent to steal contrary to section 295 of the Criminal Code Cap. 154 and was sentenced by Chrysostonis, D.J. to six months' imprisonment.

S. McBride, for the Appellant.

S. Nicolaides, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: In this case the Appellant appeals against the sentence of six months' imprisonment passed upon him by the District Court in Limassol after he had pleaded guilty to the offence of breaking into the office of a petrol filling-station with intent to steal, contrary to section 295 of the Criminal Code, Cap. 154.

As counsel for the Appellant—who is a British soldier stationed in Cyprus—has relied mainly on the argument that the personal circumstances of the Appellant were not taken sufficiently into account by the trial Court in assessing sentence and has contended that there ought to have been asked for in this respect a social investigation report in relation to the Appellant, we have taken the course of asking ourselves for such a report; and we have studied carefully its contents which do show that the Appellant is a person with an immature and abnormal, to a certain extent, personality.

We cannot, however, accept the submission of counsel for the Appellant that the offence in question was merely immature behaviour intended to attract attention to the Appellant's desire to be discharged from the ranks of the British Army; the facts that the offence was committed at night-time, when detection was less likely, and that the Appellant, when discovered by the police inside the office kneeling behind a desk, stated that somebody had pushed him into the office, are not at all compatible with such a submission, but, on the contrary they tend to show that the Appellant's action was criminally motivated.

In examining on appeal the sentence passed upon the

Appellant we have to bear in mind both the need to protect the community and the need to make the sentence be the proper one for the particular offender (see, *inter alia*, *Wheeler and Others* v. *The Police*, 1964 C.L.R. 83, at p. 87). Also, it must not be lost sight of that the assessment of the appropriate sentence in each case is primarily the task of the trial Court (see the *Wheeler* case, *supra*, at p. 87).

In the light of all relevant considerations we are not prepared to say that there exists any reason requiring us to interfere with the sentence passed by the Court below on the Appellant.

It is quite possible that the learned trial Judge may, in assessing sentence, have been influenced to some extent by the fact—to which he refers in his judgment—that the Appellant kept silent when he was asked whether he had anything to say before sentence was passed upon him; it seems that the Appellant's silence was misunderstood by the trial Judge as reluctance on the part of the Appellant to express regret for what he had done, whereas apparently the Appellant chose to say nothing because there was an army officer present in Court who made, on Appellant's behalf, a plea in mitigation. As, however, the sentence passed upon the Appellant is a very lenient one in the circumstances we do not think that we can, or should, reduce it because of the fact that the trial Judge has misinterpreted the attitude in Court of the Appellant.

The fact that the Appellant is a foreigner and, therefore, the environment of a prison in Cyprus is strange to him, is not, in our view, a consideration which could lead this Court to reduce on appeal what is otherwise an appropriate term of imprisonment for the specific offence and the particular offender; this is only a factor to be considered by the appropriate authorities at the proper time during the currency of the term of imprisonment of the Appellant (see, *inter alia*, *Marley* v. *The Republic*, 1964 C.L.R. 143, at p. 147).

In the light of the foregoing this appeal is dismissed; but in view of the personal circumstances of the Appellant we decided to make the sentence passed upon him run as from the date of conviction.

Appeal dismissed.