

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

ANDREAS KLEANTHOUS CHARALAMBOUS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 3646).

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*Military Offences—Sentence—Four months' imprisonment for
desertion—Section 29(1)(a) and (2) of the Military Cri-
minal Code and Procedure Law, 1964 (Law 40 of 1964)
—Young offender (aged 19)—Served faithfully his
5 country during the invasion and received serious injuries
which detrimentally affected his already insufficiently
formed personality—Sentence manifestly excessive in the
particular circumstances of this case—Reduced.*

*Criminal Procedure—Practice—Sentence—Young offender—
10 Medical report—Helpful for Court of Appeal to decide
what is the proper sentence—Adjournment pending pre-
paration of the report.*

The appellant, who was 19 years of age, appealed
against a sentence of four months' imprisonment imposed
15 on him by the Military Court after his plea of guilty
of the offence of desertion contrary to s. 29(1)(a) and
(2) of the Military Criminal Code and Procedure Law,
1964 (Law 40 of 1964).

In addressing the Court below in mitigation counsel
20 said—and counsel for the prosecution agreed—that
during the invasion the appellant was serving at Kyrenia
and when his unit received an order to retreat, he
managed to do so carrying with him his bren gun and
during the fight outside Morphou he was injured in
25 the lungs, legs, hands and waist; and that during the
bombing by the invading forces, a bomb exploded near
him with the result that he became completely deaf in
his left ear and slightly deaf in his right ear. As a re-
sult of his wounds, the appellant suffered a psycho-
30 logical and nervous breakdown and upon being examined

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by a medical committee he was granted three months' leave from the army.

Counsel for the prosecution having conceded before the Court of Appeal that this was a case in which the Court should have before it a medical report on the condition of the appellant, the Court of Appeal, following its previous practice that in a case of a young offender a report is indeed helpful to decide what is the proper sentence, adjourned the hearing of the appeal pending the preparation of the report. (See *Nicolaou v. Republic* (reported in this Part at p. 124, *ante*)).

The medical certificate stated that the appellant was suffering from complete perceptive deafness in the left ear and the cause was the exposure to blast. A further certificate by a specialist in psychiatry stated that the wounds received by the appellant during the war had detrimentally affected his already insufficiently formed personality; and that "therapeutically he may receive very little help and it is doubtful whether his punishment will assist him".

Held, having considered the medical certificates, the young age of the accused, who no doubt has served faithfully his country during the invasion, his serious injuries and his state of mind when he was suffering from his nerves, we have reached the conclusion that the sentence of four months' imprisonment, in the particular circumstances of this case, is a manifestly excessive sentence and we have decided that because the appellant has already served a period of imprisonment since September 2, 1975, to reduce the period of imprisonment, and we order that he should be released from prison as from to-day.

Appeal allowed.

Cases referred to:

Nicolaou v. Republic (reported in this Part at p. 124, *ante*).

Appeal against sentence.

Appeal against sentence by Andreas Kleanthous Charalambous who was convicted on the 2nd September, 1975 at the Military Court sitting at Nicosia (Case No.

184/75) on one count of the offence of desertion contrary to section 29(1) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to four months' imprisonment.

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5 Appellant appeared in person.

S. *Tamassios*, for the respondent.

The judgment of the Court was delivered by :-

HADJIANASTASSIOU, J. : The appellant, Andreas Charalambous, was convicted on his own plea of guilty of desertion in Case No. 184/75, contrary to s. 29(1)(a) and (2) of the Military Criminal Code and Procedure Law 1964 (No. 40/64) and was sentenced by the Military Court to 4 months' imprisonment after having also taken into consideration three other offences, viz., one case of leaving his place contrary to s. 56(b), and two other cases of desertion contrary to s. 29(1)(a) and (2).

The facts as shortly as possible are these :- The accused, who comes from Pano Dhikomo and is 19 years of age has joined the ranks of the National Guard on January 1, 1974, at the age of 18. He is a graduate of the elementary school only and on February 7, 1975, whilst the accused was serving in the National Guard having been stationed in Nicosia, and before he has completed two months service he deserted his unit and has not returned within a period of 6 days, but on March 3, 1975. The accused, when he was charged by the Military Authorities, he said that he sought the permission of his superior to undergo an operation and to go and see his mother who was suffering from migraine headaches, and because no permit was given to him, he left.

Counsel in addressing the Military Court in mitigation said that the accused, during the invasion, was serving at Kyrenia at the 5th and 6th milestone and when his unit received an order to retreat, he managed to do so carrying with him his bren gun and during the fight outside Morphou he was injured in his lungs, legs, two hands and his waist, and later on was found and was taken to the hospital of Kyperounda, having lost a lot of blood. Furthermore, counsel added that during the bombing by the invading forces, a bomb exploded near him with the result that he became completely deaf in

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his left ear and slightly deaf in his right ear. As a result of his wounds, the accused suffered a psychological and nervous breakdown and he was examined by a medical committee who granted to him 3 months leave from the army.

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Counsel on behalf of the prosecution very fairly supported the statement made by his counsel that the wounds which the accused received were as a result of fighting the invader. The Military Court, having considered the facts and circumstances of this case, have decided by majority to impose a term of imprisonment of 4 months—one of the members having agreed with the imprisonment imposed, decided that such sentence should be suspended—and have also imposed a direction that because the accused was suffering from his nerves, the prison authorities should take such measures to receive medical treatment and be examined also by a neurologist whilst in prison.

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Having heard the appellant who appeared in person and because very fairly counsel on behalf of the prosecution conceded that this was a case in which the Court should have before it a medical certificate reporting on the condition of the appellant, the Court, following its previous practice that in a case of a young offender a report is indeed helpful for the Court to decide what is the proper sentence, we have granted an adjournment pending the preparation of that report. (See also *Nicolaou v. Republic* (reported in this Part at p. 124, *ante*)).

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It now appears from a certificate by Dr. Kourris that the appellant is suffering from complete perceptive deafness in the left ear and the cause was the exposure to blast. There was a further medical certificate by Dr. Spyros Lakatamitis who describes the injuries suffered by the appellant and suggested also that a psychiatrist's report would also be necessary.

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On October 16, Dr. Onisiforou, a specialist in psychiatry, examined the appellant and in his report he said :-

“The abovenamed has been attended to at the Out-Patients Department of the Psychiatric Wing before his conviction where he was psychiatrically

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and psychologically examined. The psychological report of June 1975 mentions:- A person of below average intelligence who does not co-operate sufficiently; of a low judgment, negativeness and psychomotor slowness, he is immature, non adaptable, irritable and aggressive. After this he was sent to E.K.S.I. with the diagnosis of personality disturbances and a submission of 3 months suspension which he got."

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10 Finally, this was his opinion :-

15 "Opinion : It appears that the wounds he received during the war, from bullets and gas explosion, had detrimentally affected his already insufficiently formed personality. His characteristic feature is his immaturity his non-acceptance to psychological pressures, and his poor adaptability to discipline and his tendency to the immediate satisfaction of his psychological urges. His low intelligence and his poor judgment, led him into conflict with the strictly disciplined surroundings of the army.

20 Therapeutically he may receive very little help and it is doubtful whether his punishment will assist him. There are possibilities of further emotional maturity with the lapse of time."

25 Having considered the medical certificates, the young age of the accused who no doubt has served faithfully his country during the invasion, his serious injuries and his state of mind when he was suffering from his nerves, we have reached the conclusion that the imprisonment
30 of 4 months, in the particular circumstances of his case is a manifestly excessive sentence and we have decided that because the appellant has already served a period of imprisonment since September 2, 1975, to reduce the period of imprisonment, and we order that he should be
35 released from prison as from today, October 18, 1975.

Appeal allowed, sentence of imprisonment varied accordingly.

Appeal allowed.