

1976
Febr. 12

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

PANTELIS
CHARALAMBOUS
MOUSIOU
v.
THE REPUBLIC

PANTELIS CHARALAMBOUS MOUSIOU,
Appellant,

v.

THE REPUBLIC,
Respondent.

(Criminal Appeal No. 3670).

Military Offences—Sentence—Desertion, abandonment of post and causing incapacity to himself—Sections 29(1)(a) and (2), 54(b) and 38(1) of the Military Criminal Code and Procedure Law, 1964 (Law 40 of 1964), respectively—Concurrent sentences of nine and six months' imprisonment—Matters affecting question of sentence not before trial Court through failure to ask for social investigation report—Had material contained therein been available at the trial it would have affected trial Court's judgment as to appropriate sentence to be imposed—Sentence manifestly excessive—Reduced. 5 10

The appellant was found guilty, on his own plea, on five counts of the offences of desertion, abandonment of post and causing incapacity to himself and received concurrent sentences ranging from six months to nine months' imprisonment.

As stated in a social investigation report and in a report prepared by the Social Services of the Prison authorities, which were before the Court of Appeal but not before the Court below, the appellant has been suffering from chronic otitis and he had to undergo an operation on the 10th December, 1975. He was at the material time and still is in need of psychiatric treatment for personality disturbances; and that his I.Q. is considerably below normal. 15 20

The appellant appealed against sentence:

Held, allowing the appeal, (1) though in the said reports there were matters which could affect the sentence the trial Court did not have the advantage of having a full picture of the condition and personal circumstances of the appellant through failure to request for such reports to be prepared; and that if this new material which is now before us was available at the 25

trial it would have considerably affected the Military Court's judgment as to the appropriate sentence to be imposed in this case. The sentence imposed is manifestly excessive and that a term of four months' imprisonment on each of the counts, to run concurrently, is adequate in all the circumstances of the case.

5

Appeal allowed.

1976
Febr. 12
—
PANTELIS
CHARALAMBOUS
MOUSIOU
v.
THE REPUBLIC

Appeal against sentence.

10 Appeal against sentence by Pantelis Charalambous Mousiou who was convicted on the 31st October, 1975 at the Military Court sitting at Nicosia (Case No. 38/72) on three counts of the offence of desertion contrary to section 29(1)(a) and (2) of the Military Criminal Code and Procedure Law, 1964 (Law No. 40/64), on one count of the offence of abandonment of his post
15 as a sentry, and on one count of the offence of causing incapacity to himself contrary to sections 54(b) and 38(1) of Law No. 40/64 (*supra*), respectively, and was sentenced to nine months' imprisonment on each of the first three counts and to six months' imprisonment on each of counts 4 and 5, all sentences to run
20 concurrently.

M. Papapetrou, for the appellant.

Chr. Tselingas, for the respondent.

The judgment of the Court was delivered by:

25 L. LOIZOU, J.: This is an Appeal against the sentence imposed by the Military Court on the appellant in Case No. 299/75.

The charge-sheet against the accused contained six counts and on his own plea he was found guilty on the first five counts the prosecution having offered no evidence against him on the last count. The first three counts relate to offences for desertion
30 contrary to s. 29(1)(a) and (2) of the Military Criminal Code and Procedure Law of 1964 (No. 40 of 1964). The fourth and fifth counts to offences contrary to sections 54(b) and 38(1) of the Code respectively. The offences contained in these counts were committed over a period of approximately three months. The
35 trial Court imposed a sentence of nine months' imprisonment on each of the first three counts and six months for each of counts 4 and 5; all terms to run concurrently.

Appellant, a young man of just over 18 years old, appeared in person at his trial and all he had to say in mitigation was that

1976
Febr. 12

PANTELIS
CHARALAMBOUS
MOUSIOU
v.
THE REPUBLIC

he was confused at the time and did not know what he was doing and he apologized to the Court.

When this appeal first came before this Court on the 29th December, 1975, it was requested that a Social Investigation Report be prepared and this has been done and we have now before us a report prepared by a Welfare Officer and one by the Social Services of the Prison authorities.

It is clear from these reports that the appellant has been suffering from chronic otitis and as a matter of fact he had to undergo an operation on the 10th December, 1975. What is most material is that the appellant was at the material time and still is in need of psychiatric treatment for personality disturbances; and that his I.Q. is considerably below normal.

We are clearly of the view that these are matters which should affect the question of sentence but unfortunately the trial Court did not have the advantage of having a full picture of the condition and personal circumstances of the appellant through failure to request for such reports to be prepared.

We have no doubt that, as very fairly conceded by learned counsel appearing for the respondent, if this new material which is now before us was available at the trial it would have considerably affected the Military Court's judgment as to the appropriate sentence to be imposed in this case.

We think that the sentence imposed is manifestly excessive and that a term of four months' imprisonment on each of the counts, to run concurrently, is adequate in all the circumstances of the case.

In the result the appeal is allowed and the sentence reduced accordingly.

Appeal allowed.