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

SAVVAS MICHAEL CONSTANTINOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3707).

Criminal Law—Sentence—Disparity of sentence—When it may be a ground of appeal.

Criminal Law—Sentence—Shopbreaking—Three years' imprisonment—Thirteen similar offences taken into consideration in passing sentence—Appellant a young person, unmarried, of good character and a first offender until he embarked in the commission of above offences—Sentence neither manifestly excessive nor wrong in principle but on the lenient side when due weight is given to the seriousness and the number of offences committed.

Criminal Law—Sentence—Individualization—Assessment—A matter for the trial Court.

Court of Appeal—Appeal against sentence—Principles on which Court of Appeal interferes.

The appellant pleaded guilty to the offence of shopbreaking and was sentenced to three years' imprisonment. The trial Court when passing sentence, took into consideration, at the request of the appellant, another thirteen similar offences which had been committed by him. All these offences, including the offence in respect of which he was charged and convicted, were committed by him together with two other co-accused at the trial, each of whom was sentenced to three years' imprisonment; in the case of each one of these two co-accused twenty-seven, and not only thirteen, other similar offences were taken into consideration.

Upon appeal against sentence counsel for the appellant contended:

(a) That the sentence imposed on appellant was not sufficiently individualized, in the light of the extent of his

actual participation in the commission of the offences concerned and of his personal circumstances.

(b) That too much weight was given to the nature of the offences and inadequate weight to mitigating factors and

(c) there existed disparity of sentence between the appellant and his co-accused.

The appellant was a very young person, born in 1956, and he was serving in the National Guard; he was unmarried and was by trade an electrician. It appeared that he was a son of a good family, a person of good character and he was a first offender until he embarked upon the criminal activities which have led him, eventually, before the Court.

Held, (1) it is a correct proposition that there should be, as far as possible, individualization of the sentences imposed in criminal cases; but the task of assessing sentence is primarily a matter for the trial Court and this Court will not interfere unless it is satisfied that there are good reasons for doing so. Moreover even though considerable leniency was shown by this Court in dealing with the offence of housebreaking in past cases, the question of the appropriate sentence in each case has to be determined on the basis of its own particular circumstances.

(2) Though this Court can interfere in favour of an appellant in a case where the disparity of sentences may leave such appellant with a real grievance towards society as a whole, as well as towards the administration of justice, (see *Nicolaou* v. *The Police* (1969) 2 C.L.R. 120) there is no principle of law that the sentences imposed on persons who are co-accused must strictly compare; and the fact that one of them has received a short sentence is not a ground in which an appellate Court necessarily interferes with a longer sentence imposed on the other. What has to be established is not that somebody else has received a lighter sentence but that an appellant, who complains of disparity of sentences, has received a disproportionately excessive sentence (see *R.* v. *Richards*, 39 Cr. App. R. 191).

(3) We cannot say that in the present case, we are satisfied that we should intervene so as to reduce the sentence imposed on this appellant; it is not, in our opinion, either manifestly excessive or wrong in principle on the contrary it is on the

lenient side when due weight is given to the seriousness, and the number, of the offences which he has committed.

Appeal dismissed.

Cases referred to:

Kougkas and Others v. *The Police* (1968) 2 C.L.R. 209;

Pullen and Another v. *The Republic* (1970) 2 C.L.R. 13;

Evangelou v. *The Police* (1970) 2 C.L.R. 45;

Socratous v. *The Republic* (1970) 2 C.L.R. 181;

Attorney-General v. *Stavrou and Others*, 1962 C.L.R. 274;

Karaviotis and Others v. *The Police* (1967) 2 C.L.R. 286;

Papageorghiou v. *The Republic* (1971) 2 C.L.R. 327;

Nicolaou v. *The Police* (1969) 2 C.L.R. 120;

R. v. *Pitson*, 56 Cr. App. R. 391;

R. v. *Coe*, 53 Cr. App. R. 66 at p. 71;

R. v. *Richards*, 39 Cr. App. R. 191;

R. v. *Robson and East* [1970] Crim. L.R. 354;

R. v. *Street* [1974] Crim. L.R. 264.

Appeal against sentence.

Appeal against sentence by Savvas Michael Constantinou who was convicted on the 9th March, 1976 at the Military Court sitting at Nicosia (Case No. 312/75) on one count of the offence of shopbreaking, contrary to sections 20, 21, 291 and 294(a) of the Criminal Code, Cap. 154 and section 5 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to three years' imprisonment.

A. S. Angelides, for the appellant.

Chr. Tselingas, for the respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The appellant has appealed against the sentence of three years' imprisonment, as from March 9, 1976, which was passed upon him by a Military Court in Nicosia, when he pleaded guilty to the offence of shopbreaking. The trial Court, when passing sentence, took into consideration, at the request of the appellant, another thirteen similar offences which had been committed by him.

All these offences, as well as the offence in respect of which he was charged and convicted, were committed by him together

with two other co-accused at the trial, each of whom was sentenced to three years' imprisonment; they have, also, appealed against sentence, but they have withdrawn their appeals while they were being heard; in the case of each one of these two co-accused twenty-seven, and not only thirteen, other similar offences were taken into consideration in passing sentence.

The main ground on which this appellant's appeal has been based is that in his case the sentence to be imposed on him was not sufficiently individualized, in the light of the extent of his actual participation in the commission of the offences concerned and of his personal circumstances, as they have been described in a social investigation report which was produced before the Military Court. Also, that too much weight was given to the nature of the offences and inadequate weight to mitigating factors; and that the trial Court treated all three co-accused as if they were a gang responsible for the whole series of similar offences that were committed, although the appellant pleaded guilty to one of them and only thirteen other similar offences, and not twenty-seven as it was done with his co-accused, were taken into consideration in sentencing him; and, in this connection, counsel for the appellant has contended that there exists disparity of sentences between the appellant and his co-accused and has submitted that, in order to remove the grievance felt by the appellant as a result of such disparity, his own sentence should be reduced.

It has been repeatedly stressed by this Court that the task of assessing sentence is primarily a matter for the trial Court and that this Court will not interfere unless it is satisfied that there are good reasons for doing so (see, *inter alia*, *Kougkas and Others* v. *The Police*, (1968) 2 C.L.R. 209, *Pullen and Another* v. *The Republic*, (1970) 2 C.L.R. 13, *Evangelou* v. *The Police* (1970) 2 C.L.R. 45 and *Socratous* v. *The Republic*, (1970) 2 C.L.R. 181).

It is, indeed, a correct proposition that there should be, as far as possible, individualization of the sentences imposed in criminal cases (see, in this respect, *The Attorney-General* v. *Stavrou and Others*, 1962 C.L.R. 274, *Karaviotis and Others* v. *The Police*, (1967) 2 C.L.R. 286 and *Papageorghiou* v. *The Republic*, (1971) 2 C.L.R. 327).

The appellant is a very young person, born in 1956 and he is now serving in the National Guard; he is unmarried and he is by trade an electrician; it appears that he is a son of a good

family, a person of good character and that he was a first offender until he embarked upon the criminal activities which have led him, eventually, before us.

We have been referred by counsel for the appellant to cases (such as the *Stavrou* case, *supra*) in which considerable leniency was shown by this Court in dealing with the offence of housebreaking; it has, indeed, gone even to the extent of substituting a probation order in the place of a sentence of imprisonment. But, as it has been pointed out in the case of *Pullen*, *supra*, the question of the appropriate sentence in each case has to be determined on the basis of its own particular circumstances, which naturally vary very much from case to case; and it is, therefore, in our view, sometimes quite difficult to reach a safe conclusion as regards the proper sentence in a certain case by examining how another offender was dealt with for a similar offence in some other case; so, we have to decide the present appeal against sentence by reference, mainly, to its own individual merits.

Coming, next, to the proposition that disparity of sentences may be a ground of appeal in a case such as the present one, it is to be noted that it has been accepted by our Supreme Court that it can interfere in favour of an appellant in a case where the disparity of sentences may leave such appellant with a real grievance towards society as a whole, as well as towards the administration of justice; we might, indicatively, refer to *Nicolaou* v. *The Police*, (1969) 2 C.L.R. 120, and the *Socratous* case, *supra*, as well as to the English case of *R.* v. *Pitson*, 56 Cr. App. R. 391. But as has been very aptly pointed out in *R.* v. *Coe*, 53 Cr. App. R. 66, 71—(where for six offences of shopbreaking, and for eleven others which had been taken into consideration, a sentence of two and a half years' imprisonment was imposed and such sentence was not disturbed on appeal)—there is no principle of law that the sentences imposed on persons who are co-accused must strictly compare; and the fact that one of them has received a short sentence is not a ground on which an appellate Court necessarily interferes with a longer sentence imposed on the other.

As it has been stressed in *R.* v. *Richards*, 39 Cr. App. R. 191, which was referred to by Lord Parker C.J. in the *Coe* case, *supra*, what has to be established in the end is not that somebody else has received a lighter sentence, but that an appellant, who complains of disparity of sentences, has received a dispropor-

tionately excessive sentence (and see, too, *R.* v. *Robson and East*, [1970] Crim. L.R. 354 and *R.* v. *Street*, [1974] Crim. L. R. 264).

We cannot say that, in the present case, we are satisfied that we should intervene so as to reduce the sentence imposed on this appellant; it is not, in our opinion, either manifestly excessive or wrong in principle; and the fact that the other two co–accused may have got off with what may be regarded as rather lenient sentences is no justification for punishing the appellant even more leniently than he has already been punished; in our view the sentence of three years' imprisonment which has been passed upon him is on the lenient side when due weight is given to the seriousness, and the number, of the offences which he has committed.

Nor are we satisfied that the trial Court has failed to give due weight to the personal circumstances of the appellant; it has expressly referred to the social investigation report, which was placed before it, and there emerges quite clearly from its judgment that it had in mind that the appellant had asked to be taken into consideration only thirteen other similar offences committed by him, and not twenty–seven such offences as in the case of each of the other two co–accused.

Also, there is nothing on record which tends to show that there existed any reason for differentiating between the appellant and his co–accused as regards their role and participation in the crimes which were committed by all of them together.

In the result, this appeal is dismissed for the reasons set out hereinabove in this judgment.

Appeal dismissed.