

1978 August 30

[TRIANTAFYLIDIS, P., DEMETRIADES AND SAVVIDES, JJ.]

ANDREAS KALOGHIROU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3919).

Criminal Law—Sentence—Causing death by want of precaution—Section 210 of the Criminal Code, Cap. 154—Three months' imprisonment and six months' disqualification—Not wrong in principle—Mitigating factors—No due weight given to the injuries suffered by appellant in the collision—And the fact that appellant had to proceed abroad on a scholarship not duly taken into account—Sentence of imprisonment reduced—Conduct of appellant to a certain degree reckless—Period of disqualification increased. 5

Disqualification from driving—Fatal road traffic accident—Reckless conduct of appellant—Increase of period of disqualification. 10

The appellant pleaded guilty to the offence of causing death by want of precaution and was sentenced to three months' imprisonment, as from July 29, 1978, and was disqualified from holding or obtaining a driving licence for a period of six months. 15

It was not disputed that the appellant was seriously injured in the collision with the result that his right arm was scarred and considerably disabled.

Upon appeal against sentence Counsel for the appellant contended: 20

(a) that the trial Court wrongly applied the approach adopted in *The Attorney-General of the Republic v. Iacovides* (1973) 2 C.L.R. 344, regarding the injuries suffered by the appellant; and

(b) that the trial Court disregarded the fact that the appel- 25

lant had to proceed to the United Kingdom in mid September of this year on a scholarship.

5 *Held*, (1) that though the sentence passed upon the appellant is not wrong in principle (see, *inter alia*, *Ioannou v. The Police* (1978) 2 C.L.R. 39 and *R. v. Guilfoyle* [1973] 2 All E.R. 844) the trial Judge erroneously thought that on the strength of the *Iacovides* case (*supra*) the injuries suffered by the appellant in the collision could not be taken into account as mitigating circumstances; and that on the basis of a correct application
10 of the approach enunciated in that case, the said injuries were matters to which there had to be given due weight.

(2) That, moreover, the fact that the appellant had to proceed abroad on a scholarship for training relevant to his work as an Inspector of Factories in the Ministry of Labour and Social Insurance, was not duly taken into account; that the length of imprisonment which was passed on him will, if it is upheld, deprive him, apparently, of the possibility of proceeding abroad in time for the purposes of the said training and this will inevitably have detrimental repercussions regarding his career; and that, accordingly, the sentence of imprisonment
15 will be reduced to six weeks.

(3) That as the conduct of the appellant was, to a certain degree, reckless, there should, in such a case, have been imposed a sentence of disqualification for a considerable period of time, especially as the past driving record of the appellant is not clean (see the *Guilfoyle* case *supra*); and that, accordingly, there does not exist any valid ground for reducing the length of the period of disqualification, and, on the contrary, since the sentence of imprisonment has been reduced this is a case in which the period
25 of disqualification should be increased from six months to twelve months.

Appeal allowed in part.

Cases referred to:

- 35 *Attorney-General of the Republic v. Iacovides* (1973) 2 C.L.R. 344;
 Kiamil v. The Police (1974) 2 C.L.R. 16;
 Ioannou v. The Police (1978) 2 C.L.R. 39;
 R. v. Guilfoyle [1973] 2 All E.R. 844.

Appeal against sentence.

Appeal against sentence by Andreas Kaloghirou who was convicted on the 29th July, 1978 at the District Court of Larnaca (Criminal Case No. 345/78) on one count of the offence of causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154 and was sentenced by Artemis, D. J. to three months' imprisonment and disqualified from holding or obtaining a driving licence for a period of six months. 5

G. Nicolaou, for the appellant.

S. Pappasava, Counsel of the Republic, for the respondents. 10

The judgment of the Court was delivered by:

TRIANAFYLLIDES P.: The appellant has appealed against the sentence of three months' imprisonment, as from July 29, 1978, and of six months' disqualification from holding or obtaining a driving licence, which was imposed on him by the District Court of Larnaca after he had pleaded guilty to causing death by want of precaution, contrary to section 210 of the Criminal Code, Cap. 154. 15

In the light of recent case-law such as *The Attorney-General of the Republic v. Iacovides*, (1973) 2 C.L.R. 344, *Kiamil v. The Police*, (1974) 2 C.L.R. 16, and *Ioannou v. The Police*, (1978) 2 C.L.R. 39, we are of the view that the sentence passed upon the appellant is not wrong in principle; it conforms, too, with the criteria laid down in *R. v. Guilfoyle*, [1973] 2 All E.R. 844, which has been referred to with approval in the *Iacovides* and *Kiamil* cases, *supra*. 25

What has to be examined, next, is whether, in the light of the particular circumstances of the present case, the periods of imprisonment and of disqualification are of the appropriate length: 30

We agree with counsel for the appellant that there seem to exist two flaws in the reasoning given by the Judge for imposing the sentence in question, namely that there was wrongly applied the approach which was adopted in the *Iacovides* case, *supra*, regarding the injuries suffered by the appellant, and that there was disregarded the fact that the appellant has to proceed to the United Kingdom in mid September of this year on a scholarship. 35

The Judge erroneously thought that on the strength of the *Iacovides* case the injuries which were suffered by the appellant in the collision could not be taken into account as mitigating circumstances; in our view, on the basis of a correct application
5 of the approach enunciated in that case, the said injuries were matters to which there had to be given due weight; and it is not disputed that the appellant was, indeed, seriously injured with the result that his right arm is scarred and considerably disabled.

Also, the fact that the appellant has to proceed abroad, as
10 aforesaid, on a scholarship for training relevant to his work as an Inspector of Factories in the Ministry of Labour and Social Insurance, was not duly taken into account. The length of the sentence of imprisonment which was passed on him will, if it is upheld, deprive him, apparently, of the possibility of pro-
15 ceeding abroad in time for the purposes of the said training and this will inevitably have detrimental repercussions regarding his career.

We have, therefore, in the light of all the foregoing, decided to reduce the sentence of imprisonment from three months to
20 only six weeks.

As regards, next, the disqualification order, we do not overlook the fact that the appellant needs his driving licence in relation to his work, but, as has been conceded, very fairly, by his counsel, he could temporarily manage to attend to his
25 duties without being able to drive.

The trial Judge has found that the conduct of the appellant was, to a certain degree, reckless; so, according to the criteria laid down in the *Guilfoyle* case, *supra*, there should, in such a case, have been imposed a sentence of disqualification for a
30 considerable period of time, especially as the past driving record of the appellant is not a clean one.

We, therefore, do not think that there exists any valid ground for reducing the length of the period of disqualification, and, on the contrary, since we have reduced the sentence of im-
35 prisonment passed on the appellant we have decided that this is a case in which we should increase the period of disqualification from six months to twelve months.

The appeal is, therefore, allowed in part and the sentence is varied as stated in this judgment.

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Appeal partly allowed.