

1978 November 16

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

SOTERIS SPYROU KOUFOU,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3952*).

Criminal Law—Sentence—Obtaining credit by false pretences—Section 301 of the Criminal Code, Cap. 154—One year’s imprisonment—Undue Weight given to appellant’s bad criminal record—Disparity of sentences—Co-accused given suspended sentences of imprisonment—Counsel for respondents conceding that sentence rather excessive—Reduced.

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Criminal Law—Sentence—Disparity of sentences—Principles applicable.

The appellant pleaded guilty to the offence of obtaining credit by false pretences and was sentenced to one year’s imprisonment. The amount involved was C £ 80 and was obtained in the form of food and lodging at the house of the complainant after the appellant, who is a married man and the father of two infant children, but on bad terms with his wife, had falsely said to the complainant that he was single and intended to marry his young daughter.

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Three other persons, who were co-accused of the appellant were sentenced to five months’ imprisonment, suspended for three years, after pleading guilty to the offence of aiding and abetting the appellant to commit the above offence.

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On appeal against sentence:

Held, that as the girl concerned knew that the appellant was a married man, though this was concealed from her parents; that as the co-accused of the appellant were given merely suspended

sentences of imprisonment, thus leading to such disparity of sentences as would leave the appellant with a real grievance towards the administration of justice and society as a whole (see, *inter alia*, *Ktimatias and Another v. The Republic* (1978) 2 C.L.R. 82 at p. 99); that as the trial Court has given undue weight to the bad criminal record of the appellant in passing on him the sentence of one year's imprisonment, which is the maximum punishment provided by law for the offence in question; and that as counsel for the respondent has stated that, in his view, the trial Court has perhaps imposed a sentence which is rather excessive in the circumstances, because it punished the appellant more for his past than for what he had actually done on the present occasion, this Court should intervene and reduce the sentence to one of six months' imprisonment.

15 *Appeal allowed.*

Cases referred to:

Constantinou v. Republic (1977) 9-10 J.S.C. 1527 at p. 1530
(to be reported in (1976) 2 C.L.R.);
Iacovou and Others v. Republic (1977) 9-10 J.S.C. 1554 at p.
 20 1570 (to be reported in (1976) 2 C.L.R.);
Foulias v. Police (1978) 2 C.L.R. 56 at p. 58;
Ktimatias and Another v. Republic (1978) 2 C.L.R. 82 at p. 99.

Appeal against sentence.

25 Appeal against sentence by Soteris Spyrou Koufou who was convicted on the 15th September, 1978 at the District Court of Limassol (Criminal Case No. 11935/78) on one count of the offence of obtaining money by false pretences, contrary to sections 297 and 301(a) of the Criminal Code Cap. 154 and was sentenced by Korfiotis, D.J. to one year's imprisonment.

30 Appellant appeared in person.

R. Gavrielides, Counsel of the Republic, for the respondents.

35 TRIANTAFYLLOIDES P., gave the following judgment of the Court. This is an appeal against a sentence of one year's imprisonment, as from September 15, 1978, which was passed upon the appellant by the District Court of Limassol, after he had pleaded guilty to the offence of obtaining credit by false pretences, contrary to section 301 of the Criminal Code, Cap. 154.

The amount involved was C£80 and credit was obtained in the sense that the appellant, who is a married man and the father of two infant children, but on bad terms with his wife, said falsely to the complainant, who is the father of a young girl, that he was single and intended to marry her, and as a result he was allowed to live at the house of the complainant enjoying free food and lodging for a period of two months; thus the complainant incurred an expenditure of C£80 for the benefit of the appellant. 5

Three other persons, who were the co-accused of the appellant, pleaded guilty to the offence of aiding and abetting the appellant to commit the offence for which he was sent to prison and they were sentenced to five months' imprisonment, which was, however, suspended for three years. 10

In dealing with this appeal we have, first, to take into account that it is not disputed that the girl concerned knew that the appellant is a married man, though this was concealed from her parents. 15

Also, it is, in our view, a striking fact that, as already stated, the co-accused of the appellant were given merely suspended sentences of imprisonment, thus leading to such disparity of sentences as would leave the appellant with a real grievance towards the administration of justice and society as a whole (see, in this respect, *inter alia*, *Constantinou v. The Republic*, (1977) 9/10 J.S.C. 1527, 1530*, *Iacovou and Others v. The Republic*, (1977) 9/10 J.S.C. 1554, 1570*, *Foulias v. The Police*, (1978) 2 C.L.R. 56, 58 and *Ktimatias and Another v. The Republic*, (1978) 2 C.L.R. 82, 99. 20 25

It appears from the reasoning of the trial Judge that he has given undue weight to the bad criminal record of the appellant in passing on him the sentence of one year's imprisonment, which is the maximum punishment provided by law for the particular offence to which the appellant has pleaded guilty. 30

Counsel for the respondents has, indeed, very fairly stated before us that, in his view, too, the trial Court has perhaps imposed a sentence which is rather excessive in the circum- 35

* To be reported in (1976) 2 C.L.R.

stances, because it punished the appellant more for his past than for what he had actually done on the present occasion.

In the light of all these considerations we think that we should intervene in favour of the appellant and reduce the sentence
5 imposed on him to one of six months' imprisonment as from the date when he was originally sentenced.

This appeal is, therefore, allowed to that extent.

Appeal allowed. _