

1979 November 29

[TRIANTAFYLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

SPYROS AVGHOUSTI,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

(*Criminal Appeal No. 4079*).

5 *Military offences—Sentence—Failing to enlist in the National Guard—  
Mitigating factors—Appellant a person of very good character  
and labouring under the bona fide misconception that he was  
entitled to be exempted from military service—Solemn assurance  
by him that he now appreciates fully that he is bound to enlist in  
the National Guard and that he intends to do so at the first  
available opportunity—Sentence of four months' imprisonment,  
though not wrong in principle, excessive —Reduced.*

10 *Sentence—Young offender—Aged twenty—Need for a social investiga-  
tion report when it is contemplated to send to prison a young  
offender.*

The appellant pleaded guilty to the offence of failing to enlist in the National Guard and was sentenced by a military Court to four months' imprisonment.

15 It appeared that the appellant, who was a person of very good character, was labouring under the bona fide misconception that he was entitled to be exempted from military service because his father was assassinated as a result of a personal feud in July 1974 and, thus, the appellant, who was a mason, became the bread-winner for his family, which consisted of his mother and a brother and a sister who are younger than him and are still at school.

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25 During the hearing of this appeal the appellant solemnly assured the Court of Appeal that he appreciated fully that he was bound to enlist in the National Guard and that he intended to do so at the first available opportunity.

*Upon appeal against sentence:*

*Held*, that though the sentence of imprisonment which was passed upon the appellant is not wrong in principle, because the offence which he has committed is, indeed, of a serious nature, the duration of his incarceration ought to be such as to fit his personal circumstances and the special facts of this case; that in the light of all pertinent considerations a sentence of four months' imprisonment in the present case is so excessive that it should be reduced in a manner enabling the appellant, who has been in prison, already, for more than two months, to be released today.

*Appeal allowed.**Observations:*

Unfortunately the social investigation reports, which were prepared at the request of the Court of Appeal, were not before the military Court, even though on more than one occasion the Court of Appeal has stressed the need of asking for a social investigation report when it is contemplated to send to prison a young offender, like this appellant, who is only twenty years old.

**Appeal against sentence.**

Appeal against sentence by Spyros Avgousti who was convicted on the 21st September, 1979 by a military Court, sitting at Nicosia, (Case No. 210/79) on one count of the offence of failing to enlist in the National Guard, contrary to section 22(1)(a) of the National Guard Law, 1964 (Law 20/64) (as amended by Law 22/78) and was sentenced to four months' imprisonment.

Appellant appeared in person.

*G. Santis*, for the respondent.

TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant was sentenced by a military Court to four months' imprisonment, as from September 21, 1979, after having pleaded guilty to the offence of failing to enlist in the National Guard, contrary to section 22(1)(a) of the National Guard Law, 1964 (Law 20/64), as amended, in this connection, by the National Guard (Amendment) Law, 1978 (Law 22/78).

He has appealed against the said sentence on the ground that

it is excessive. As he has made this appeal while being in prison, without the assistance of counsel, and he is not represented by counsel in the present proceedings, we have adjourned the hearing of this appeal till today so as to enable learned counsel  
5 for the respondent to arrange for the preparation of two social investigation reports regarding the appellant, the one from the Department of Social Welfare and the other from the Central Prisons. These reports were not, unfortunately, before the military Court, even though we have on more than one occasion  
10 stressed the need of asking for a social investigation report when it is contemplated to send to prison a young offender, like this appellant, who is only twenty years old.

We have perused the said reports and have weighed carefully all that has been said by the appellant and by counsel for the  
15 respondent who has, indeed, taken a most commendable very fair stand.

It appears that the appellant, who is a person of very good character, was labouring under the bona fide misconception that he was entitled to be exempted from military service because  
20 his father was assassinated as a result of a personal feud in July 1974 and, thus, the appellant, who is a mason, became the breadwinner for his family, which consists of his mother and a brother and a sister who are younger than him and are still at school.

During the hearing of this appeal the appellant has solemnly  
25 assured us that he now appreciates fully that he is bound to enlist in the National Guard and that he intends to do so at the first available opportunity, that is in January 1980.

We are of the opinion that the sentence of imprisonment which was passed upon the appellant is not wrong in principle, because  
30 the offence which he has committed is, indeed, of a serious nature, but, on the other hand, we think that the duration of his incarceration ought to be such as to fit his personal circumstances and the special facts of this case. In the light of all pertinent considerations we have reached the conclusion that a  
35 sentence of four months' imprisonment in the present case is so excessive that it should be reduced in a manner enabling the appellant, who has been in prison, already, for more than two months, to be released today.

This appeal is, therefore, allowed accordingly.

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*Appeal allowed.*