1983 October 27

[TRIANTAFYLLIDES, P., LORIS AND PIKIS, JJ.]

STELIOS ANTONIOU,

Appellant.

v.

THE POLICE.

Respondents.

(*Criminal Appeal No.* 4464).

Criminal Law—Sentence—Burglary—Nine months' imprisonment—Consecutive with sentence of two years' imprisonment appellant was serving—Appellant aged 24 *and burdened with* 18 *previous convictions—Principles governing imposition of maximum sentence provided by law—Appellant an intermediate recidivist in view of his reform whilst in prison and the real prospect of his rehabilitation—Wrong to make the sentence consecutive to the sentence he was serving which makes the two sentences very close to the maximum—Sentence reduced.*

The appellant pleaded guilty to the offence of burglary and was on the 5th September, 1983, sentenced to nine months' imprisonment, to run consecutively to the sentence of two years' imprisonment he was serving, which had been imposed on him on the 18th July, 1982 for housebreaking. He was aged 24 and was burdened with 18 previous convictions mostly for offences involving dishonesty. The burglary was detected on the 27th July, 1982.

Upon appeal against sentence accused pleaded that he transformed his approach and way of life while in prison and invited the Court of Appeal to allow his immediate release in order to give him a chance to reap the benefits of his reformed approach to life and work habits.

Held, (after stating the principles governing the imposition of the maximum sentence) that on a review of the list of previous convictions of the appellant, his circumstances and evidence

of reform, approach and way of life couple with his age, 24 years old, the appellant fits into the category of an intermediate recidivist; that generally, Courts are reluctant to write off young persons and confront them with the full severity of the law unless all hope for their reform has vanished; that in the light of this reality and the progress made by the appellant in prison it was wrong on the part of the Court to make the sentence consecutive to the sentence he was serving; that adding up the two sentences the term is one of two years and nine months, very close to the maximum that the Court could have imposed in the first place i.e. in July, 1982 had it been required to take the present offence into consideration as well; that for these reasons this would be undesirable in view of the age of the accused; that moreover, the trial Judge in this case ought not to have made the sentence consecutive in view of real progress made in prison and the real prospect of rehabilitation of the appellant; that, consequently, the sentence of imprisonment imposed in this case on 5th September, 1983 will be reduced to one coinciding with the expiry of the sentence of imprisonment appellant was serving at the time so as to allow the release of the appellant in a day or two.

Appeal allowed.

Cases referred to:

Marley v. *Republic*, 1964 C.L.R. 143;

Kakouris v. *Police* (1972) 2 C.L.R. 42.

Appeal against sentence.

Appeal against sentence by Stelios Antoniou who was convicted on the 5th September, 1983 at the District Court of Larnaca (Criminal Case No. 1414/83) on one count of the offence of burglary contrary to section 292(a) of the Criminal Code, Cap. 154 and was sentenced by G. Nicolaou, D.J. to nine months' imprisonment to run consecutively to the sentence he was serving.

Appellant appeared in person.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES, P.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS, J.: In collaboration with two others the appellant

burgled into the house of a distant relation of one of his accomplies and stole therefrom cash of £57.500 mils and valuables worth £80.- The crime remained undetected until the 27th July, 1982 when an accomplice of the appellant confessed the commission of the offence setting afoot police investigations for its discovery. Meantime the appellant committed other offences, apparently of a similar nature, in the context of what appears to have been a housebreaking spree for which he was prosecuted before the Nicosia District Court. On 18th July, 1982, he was sentenced to a term of two years' imprisonment.

In connection with the present proceedings the appellant first appeared before the District Court of Larnaca on 23rd May, 1983 to answer to the charge. Although he admitted the offence the case was adjourned on the application of his co-accused and in order to allow time for the preparation of a social inquiry report. He was dealt with by the Court as well as his co-accused on 5th September, 1983. He was sentenced to nine months' imprisonment to run consecutively to the sentence he was serving, a sentence that is about to expire today.

The learned trial Judge in a well considered judgment makes reference to the facts of the case, somewhat alarming because of the lack of any restraint on the part of the appellant and his accomplice in engaging upon the criminal venture, as well as the circumstances of the appellant and concluded that the sentence imposed should commence after the expiration of the two years' sentence of imprisonment. But for the fact that the appellant was serving a sentence of imprisonment, the trial Judge noted, he would be inclined to impose a sentence twice as long.

Before us the appellant made an impassioned plea inviting us to allow his immediate release in order to give him a chance to reap the benefits of his reformed approach to life and work habits. His last stay in prison helped him reflect on the pointlessness of crime that caused him apart from his incarceration the break-up of his marriage. His wife divorced him while in prison. He is gravely concerned about the fate and well being of their four year old child. The trade he learned in

prison, pyroligneous wood engraving will make possible his profitable employment and help him sustain himself in life and help his child. He is anxious to be given a chance to make a fresh start not an impossible eventuality to contemplate given his age, 24 years old.

Notwithstanding his age the accused is burdened with some 18 previous convictions mostly for offences involving dishonesty. He vouched never again to collide with the law, a collision that retarded in the past his social and family progress. He pointed to his last record in prison as foreshadowing a reformed life.

The submission of appellant that he transformed his approach and way of life while in prison is supported by the officer who prepared a social inquiry report into the person and circumstances of the appellant. Of this change he gave ample indication to the prison authorities by evincing a spirit of cooperation with everyone while in prison and applying himself hard to learn a trade. His good conduct earned him the right or privelege to be released on licence during weekends. In sum his plea that he reformed is supported by the Welfare Office who looked into his case. Counsel for the Attorney-General found himself unable to support the decision of the trial Judge to make the sentence imposed consecutive to the one appellant was undergoing at the time of its imposition, rendering the sentence excessive. The progress made by appellant in prison, he acknowledged, merited better consideration.

We are of opinion that a sentence of nine months' imprisonment is correct in principle in that it is commensurate to the gravity of the offence and accords with the circumstances of the offender. Only one point is at issue: The soundness of the decision to make the sentence consecutive in view of (a) the fact that the offence under consideration was committed prior to the one for which appellant was sentenced, the two years' imprisonment and (b) evidence showing that appellant improved his ways while in prison reducing the likelihood of appellant engaging in criminal activity in future.

The term of imprisonment imposed in July, 1982 could have had no reformative or rehabiliatory effects upon the appellant as far as the commission of the offence under consideration

is concerned in view of the date of its commission, 8th June, 1982. We are, therefore, in agreement with the trial Judge that his task lay mostly in the determination of the overall sentence of imprisonment that the Court would have been likely to impose in July, 1982 had it been apprised of the present case as well. Of course, the task of the Court was not confined to an exercise in retrospect but enlightened by the hindsight of progress made while in prison after 18th July, 1982.

Whenever the Court contemplates the imposition of a term of imprisonment for a series of offences though it must strive to evaluate the gravity and implications of particular offences it must ultimately impose a sentence that reflects the overall culpability of the accused on the one hand and matches the person of the offender on the other. See *Keith Marley* v. *The Republic*, 1964 C.L.R. 143. Sentencing is a fine and intricate process that aims to vindicate the law and retreive to the extent possible the offender for the benefit of himself and society. In deciding the length of a sentence of imprisonment the Court must have as a premise at one end of the scale that the imposition of the maximum sentence permitted by law is only justified in two situations: When the nature of the crime is such as to call for exceptional measures of deterrence in the interest of social order firstly and secondly whenever the criminal record of the accused is such as to shun all hope of reform. In other words whenever the past record of the accused makes him an irredeemable recidivist. This principle that the maximum sentence in the second category mentioned above is reserved for irredeemable recidivists, is echoed in the decision in *Kyriacos Georghiou Kakouris* v. *The Police* (1972) 2 C.L.R. 42. As Triantafyllides, P. put it "Indeed, such a sentence (meaning the maximum) could have been imposed only if all hope of reforming the Appellant and protecting society from him, by any lesser period of imprisonment, had been lost;.....".

In his work on sentencing D.A. Thomas discerns on a review of English cases on sentencing another category of recidivists that he classifies as intermediate recidivists i.e. persons for whom hope of reform has not altogether been lost. In this category come persons for whom, on account of age or past circumstances, a glimmer of hope still exists for their reform while their list of

previous convictions is not so extensive as to categorize them as hardened recidivists. (D.A. Thomas Principles of Sentencing, 2nd ed., pp. 20-22). As the learned author puts it Courts may be impelled to a merciful conclusion in cases of intermediate recidivists in the face of evidence that they have established relations and habits that are apt to have a stabilizing effect upon their life. On a review of the list of previous convictions of the appellant, his circumstances and evidence of reform, approach and way of life coupled with his age, 24 years old, the appellant fits into this category of offenders. Generally, Courts are reluctant to write off young persons and confront them with the full severity of the law unless all hope for their reform has vanished. In the light of this reality and the progress made by the appellant in prison it was wrong on the part of the Court to make the sentence consecutive to the sentence he was serving. Adding up the two sentences the term is one of two years and nine months, very close to the maximum that the Court could have imposed in the first place i.e. in July, 1982 had it been required to take the present offence into consideration as well. For the reasons given above this would be undesirable in view of the age of the accused. Moreover the learned trial Judge in this case ought not to have made the sentence consecutive in view of real progress made in prison and the real prospect of rehabilitation of the appellant. Consequently, we reduce the sentence of imprisonment imposed in this case on 5th September, 1983 to one conciding with the expiry of the sentence of imprisonment appellant was serving at the time so as to allow the release of the appellant in a day or two.

Appeal allowed. Order accordingly.