

1984 May 23

[TRIANTAFYLIDIS, P., LORIS. PIKIS, JJ.]

SOTERIS ANTONI DEMETRIOU,

Appellant,

v.

THE REPUBLIC,

Respondents.

(Criminal Appeal No. 4503).

Criminal Law—Sentence—Mental state of appellant a factor relevant to sentence—Appellant a person of psychopathic personality—In the absence of information on appellant's mental state trial Court could not properly appreciate the culpability of appellant and they failed to individualise sentence in a manner befitting his person—This task performed by Court of Appeal after obtaining a report from a mental specialist—Sentence of fifteen months' imprisonment for using violence against a superior in the army, contrary to section 53(1) of the Criminal Military Code and Procedure Law, 1964, reduced to nine months' imprisonment.

The appellant, a twenty-year old National Guardsman, was sentenced by the Military Court to fifteen months' imprisonment on a charge of using violence against a superior in the army, contrary to s.53(1) of the Criminal Military Code and Procedure Law; and was, also, sentenced to a concurrent term of six months imprisonment for insulting a superior, committed in the context of the same incident of insubordination. Two cases of desertion were taken into consideration in passing sentence upon the appellant.

Upon appeal against sentence Counsel for the appellant raised the issue of the mental state of the appellant as a factor bearing on his sense of responsibility; and as the appellant showed evident signs of neurosis tending to support the submission of mental instability, in order to have a proper picture of the mental state of the appellant, the Court of appeal sought a report from

a mental specialist which certified that he was a person of psychopathic personality, seriously afflicted in that regard.

Held, that the mental state of the appellant is a factor relevant to the determination of sentence; that the relevance of mental affliction in the sentencing process lies primarily in the information it supplies about the element of culpability in the conduct of the accused; that if it points to diminished responsibility for reasons beyond the control of the accused, it constitutes a factor that can legitimately be taken into account as mitigating the gravity of the crime committed by the accused; that in the absence of the aforementioned information on the mental state of the appellant, the Military Court could not properly appreciate the culpability of the appellant and, in that way, failed to individualise sentence in a manner befitting his person; that this task has been performed by this Court and having done so, it decided that the appropriate sentence is nine months imprisonment; accordingly the appeal must be allowed.

Appeal allowed.

Cases referred to:

- Costa v. Republic* (1966) 2 C.L.R. 87; 20
- Chrysafis v. Republic* (1967) 2 C.L.R. 310;
- Pantelis v. Republic* (1969) 2 C.L.R. 92;
- Georghiou v. Republic* (1975) 12 J.S.C. 2063.

Appeal against sentence.

Appeal against sentence by Soteris Antoni Demetriou who was convicted on the 20th February, 1984 by the Military Court sitting at Nicosia (Case No. 659/83) on one count of the offence of using violence against a superior contrary to section 53(1) of the Military Criminal Code and Procedure Law, 1964 and on one count of insulting a superior contrary to section 52(1) of the above law and was sentenced to 15 months' imprisonment on the first count and six months' imprisonment on the second count, the sentences to run concurrently.

A. Pandelides, for the appellant.

St. Tamasios, for the respondents. 35

TRIANTAFYLIDIS P.: Mr. Justice Pikiis will deliver the judgment of the Court.

PIKIS J.: The appellant, a twenty-year old National Guardsman, was sentenced by the Military Court to fifteen months' imprisonment on a charge of using violence against a superior in the army, contrary to s.53(1) of the Criminal Military Code and Procedure Law. Also, he was sentenced to a concurrent term of six months' imprisonment for insulting a superior, committed in the context of the same incident of insubordination. Two cases of desertion were taken into consideration in passing sentence upon the appellant.

Undoubtedly, the offences were serious, like every offence, undermining discipline in the army, the sustainance of which is vital for the efficacy of the National Guard. No suggestion has been made that the sentence of fifteen months' imprisonment is wrong in principle. And none such suggestion could be entertained in face of the gravity of the conduct of the appellant, derogatory of discipline in the army. Nevertheless, we decided to reduce the sentence for reasons peculiarly associated with the mental state of the appellant, a matter that was not properly ventilated before the Military Court.

Counsel for the appellant raised the issue of the mental state of the appellant in arguing the appeal before us and, submitted that his mental state should concern the Court as a factor bearing on his sense of responsibility. We noticed that appellant showed evident signs of neurosis, tending to support the submission of mental instability. In order to have a proper picture of his mental state, we sought a report from a mental specialist before proceeding further in the matter.

On the adjourned hearing, a report of Dr. Malekides, a specialist psychiatrist, was produced before us. The report confirmed our apprehensions about appellant's mental state, certifying he is a person of psychopathic personality, seriously afflicted in that regard. Primarily, it stems from inability to adjust to his environment, a derangement explaining in part the unreasonable reaction of the appellant to his army surroundings and his proneness to insubordination.

The mental state of the appellant is not a recent development but one that has bedevilled him for years, producing social

mal-adjustment. It certainly troubled him at the time of the commission of the offence and, as such, upon accepted principles, constituted a factor relevant to the determination of sentence (see, inter alia, *Andreas Foka Costa v. The Republic* (1966) 2 C.L.R. 87; *Christos Chrysostomou Chrysafis v. The Republic* 5 (1967) 2 C.L.R. 310; *Adamos Pantelis v. The Republic* (1969) 2 C.L.R. 92; *Georghiou v. The Republic* (1975) 12 J.S.C. 2063). The trial Court did not have before it a proper account of his mental state, consequently, it could not attach to this factor the weight it merited as a determinant of sentence. 10

Faced with this reality, we examined whether the sentence was calculated, apart from marking the gravity of the offence, to fit the person of the appellant as well. The relevance of mental affliction in the sentencing process lies primarily in the information it supplies about the element of culpability in the conduct of the accused. And if it points to diminished responsibility for reasons beyond the control of the accused, it constitutes a factor that can legitimately be taken into account as mitigating the gravity of the crime committed by the accused. 15

In the absence of the aforementioned information on the mental state of the appellant, the Military Court could not properly appreciate the culpability of the appellant and, in that way, failed to individualise sentence in a manner befitting his person. This task we have performed ourselves and, having done so, we decided the appropriate sentence is nine months' imprisonment. It is advisable, as Dr. Malekides recommends, that appellant should be medically examined the soonest, to test his fitness for service in the National Guard. Such examination should take place as early as possible, while appellant is at the Central Prisons. 20 25 30

In the result, the appeal against sentence is allowed. Sentence on count 1 is reduced to nine months' imprisonment. The sentence of six months' imprisonment, on conviction for insulting a superior, should run concurrently with the above.

Appeal allowed. 35
Sentence reduced.