

1984 November 8

[A. LOIZOU, DEMETRIADIS, SAVVIDES, JJ.]

ANTONIOS PROCOPI KYTA,

*Appellant.*

v.

THE REPUBLIC,

*Respondent.**(Criminal Appeal No. 4540).*

*Criminal Law—Sentence—Possession and carrying a firearm—Seriousness of the offences—Mitigating factors—Mental state of offender at time of commission of offence—And aggravation of his condition by a long stay in prison which may cause him irreparable harm—Sentence of three years' imprisonment manifestly excessive—Reduced to one year's imprisonment.* 5

The appellant, a national guardsman, pleaded guilty to the offences of possessing a firearm, carrying a firearm, possessing explosive substances and on two counts of threatening violence and was sentenced to three years' imprisonment on the first and second counts and six months' imprisonment on each of the remaining counts, all sentences to run concurrently. Whilst serving in the national guard he left his camp carrying his personal weapon and two loaded magazines. He thereafter under the threat of killing he made one Costas HadjiPavlou drive him to the village of Pseudas and he eventually drove him to Kalo Chorio. Appellant was a person who had serious problems with his mental health both before as well as at the time of the commission of the above offences. According to the psychiatrist, who treated him whilst in prison, he had great difficulties in communicating with the other inmates. He could not withstand the pressures of the prison and his mental health was deteriorating rapidly. He was withdrawn, isolated and paranoid and that further imprisonment could probably have permanent damage on his mental health. 25

*Upon appeal against sentence:*

5           *Held.* that though the possession and carrying of a military  
 and they have to be punished severely the good administration  
 of criminal justice demands on well settled principles that the  
 sentence to be imposed must be the appropriate one both on  
 account of the circumstances of the offence as well as of the  
 10           circumstances of the offender himself; that the mental state  
 of a person constitutes a mitigating factor in determining the  
 sentence and the appropriate weight has to be given to it; that  
 a person suffering from a mental handicap at the time of the  
 commission of an offence, be it permanent or temporary, is  
 entitled to leniency; that it would, also, be cruel to permit the  
 15           aggravation of the condition of an offender by a long term in  
 prison, which stay may cause him irreparable damage; that in  
 the very exceptional circumstances with regard to the mental  
 state of the appellant the sentences of three years' imprisonment  
 imposed are manifestly excessive and they must, therefore, be  
 20           reduced, accordingly to one year's imprisonment for counts  
 1 and 2, to run concurrently with the other lesser sentences  
 from the date they were imposed.

**Appeal against sentence.**

Appeal against sentence by Antonis Panayi Kyta who was  
 convicted on the 17th May, 1974 by the Military Court sitting  
 25           at Larnaca on one count of the offence of possessing a firearm  
 contrary to sections 3(1)(c) and 2(b) of the Firearms Law, 1974  
 (Law No. 38/74 as amended by Law No. 27/78) on one count  
 of the offence of possessing a firearm the importation of  
 which is prohibited contrary to sections 3(1) and 2(a) of  
 30           the above Law, on one count of the offence of possessing  
 explosive substances contrary to section 4(4)(d) of the  
 Explosive Substances Law, Cap. 54 (as amended by Law  
 No. 27/78) and on two counts of the offence of threatening  
 violence contrary to section 91(c) of the Criminal Code, Cap.  
 35           154 and were sentenced to concurrent terms of imprisonment  
 of three years on each of the first two counts and six  
 months on each of the other three counts.

*Ch. Ierides with N. Clerides (Mrs.), for the appellant.*

*St. Tamasios, for the respondents.*

A. LOIZOU J. gave the following judgment of the Court. The appellant, a national guardsman, was on his own plea convicted on the 17th May, 1984, by the Military Court sitting in Larnaca, of the following offences:

- (a) Possession of a firearm contrary to section 3(1)(c) 5  
2(b) of the Firearms Law 1974 Law No. 38 of 1974,  
as amended by Law No. 27 of 1978.
- (b) Carrying a firearm the importation of which is pro-  
hibited contrary to section 3(1) and 2(a) of the afore-  
said law. 10
- (c) Possession of explosive substances without a permit  
contrary to section 4(4)(d) of the Explosive Substances  
Law, Cap. 54 as amended by Law No. 27 of 1978.
- (d) Threatening violence with intend to alarm a person  
in a dwelling house by discharging a loaded firearm, 15  
contrary to section 91(b) of the Criminal Code, Cap.  
154, and
- (e) Threatening violence with intend to cause a person  
to do an act which he was not legally bound to do  
contrary to section 91(c) of the Code. 20

Before sentence was passed upon him he applied through his counsel under s. 81 of the Criminal Procedure Law, Cap. 155, that a number of outstanding offences which he admitted to have committed, contained in three other cases under numbers 224/84, 225/84 and 226/84, be taken into consideration, to 25  
which the prosecution consented. The sentences imposed on the appellant were three years' imprisonment on the first and second counts and six months' imprisonment on the 3rd, 4th and 5th counts, all sentences to run concurrently.

The appeal which is against the sentences of three years so 30  
imposed was argued on the ground that same were manifestly excessive. The basic argument advanced on behalf of the appellant was that the Military Court in determining the said sentences did not give the appropriate weight to the mental state of the 35  
appellant as it was at the time of the commission of the offences to which he had pleaded guilty and in respect of which the sentences appealed against were imposed.

The offences to which the appellant pleaded guilty are serious ones and carry long terms of imprisonment, ranging from imprisonment for life for the second count, fifteen years for the first count and three years imprisonment for the last two counts. No doubt the possession and carrying of a military weapon and its unlawful use in the circumstances which will be shortly related, constitute a very serious matter and they have to be punished severely. On the other hand the good administration of criminal justice demands on well settled principles that the sentence to be imposed must be the appropriate one both on account of the circumstances of the offence as well as of the circumstances of the offender himself.

The facts of the case are as follows: The appellant who was a motor-car mechanic enlisted in the National Guard on the 13th July, 1983. On the 17th October, 1983 he was serving in the 33rd Commando Unit. At about 19 hours the appellant holding his personal weapon went and saw the soldier on guard duty. Under the pretext that he had been detailed to replace him he took from him the two loaded magazines which the latter had been issued with, containing 36 cartridges. He then took advantage of the darkness and left the camp. At about 19:45 hours he approached the house of Costas HadjiPavlou, the complainant in counts four and five, which was situated near the camp of the appellant. He knocked at the door and woke up the complainant, who on opening the door saw the appellant who asked him to throw him the keys of his car. Upon hearing this the complainant slammed the door. The appellant then called out to the complainant that he would count up to three and if he did not give him the keys he would kill him. He did in fact count up to three and when the keys were not given to him he fired once in the air in order to frighten the complainant, who thereupon opened the door and asked the appellant what he wanted. The appellant told him that he wanted to drive him to the village of Psevdas and threatened him that he would kill him if he did not do so. The complainant eventually took him to Kalo Chorio.

On the 20th of October 1983, acting on information the authorities visited Athienou village. In the store of a villager they found the personal automatic weapon of the appellant, a 7.62 m.m. type, the two magazines loaded with eleven and twenty

cartridges respectively and some personal effects of the appellant which he had left there.

The appellant gave himself up to a police-man, who was personally known to him on the 24th October, 1983. He made a voluntary statement of his deeds and whereabouts from the moment he left his unit to that moment and when he was formally charged he said "I admit and I apologize. The reason that I did it is because I thought that they were running after me to catch me and I was afraid". 5

On the 2nd November 1983, the appellant was admitted to the Psychiatric Institutions of Athalassa for psychiatric examination and observation. His condition on admission and the conclusions of Dr. Malekkides, the specialist psychiatrist, under whose care he was placed, are to be found in a report which was produced at the trial of the appellant. Suffice it to say at this stage that he presented anxiety, depression and paranoid ideas, not of a systematic nature but he believed that in his unit certain persons wanted to kill him. His paranoid ideas revolved around the environment of his camp. Before, however, we deal with this personal aspect of the appellant, reference may be made to certain movements and acts of the appellant between the time he left his unit to the time he gave himself up, which constitute the outstanding offences which he asked to be taken into consideration. 10 15 20

On the 18th of October and at about 10:45 p.m. Stella Cle-anthous and Anna Steliou, whilst walking on the Aradipou, Tsiakkilero road and about half a mile from the refugee camp heard a shot coming from behind the trees on the left side of the road. Soon afterwards they saw the appellant and they heard three more shots, when they were frightened and run away. These facts constitute the subject of criminal case 224/84. 25 30

The same night at Aradipou village he broke and entered in the canteen of the second and third Elementary Schools and stole various cakes to the value of fifteen pounds, property of Pantelis Killi of Aradipou. He used for the purpose of breaking into an iron-bar. He also broke and entered into the third Elementary School and stole one curtain valued at two pounds, property of the said school. From the first Ele- 35

mentary School which he broke into he stole a knife 16 inches long, valued five pounds and various sweets to the value of ten pounds. He also broke into and entered into the canteen of Aradipou Gymnasium and stole various sweets of a value of  
5 twelve pounds. These facts constitute the offences in criminal case No. 226/84, whereas the offence in case No. 225/84 is that of abandoning his unit without a permit from the 17th to the 24th of October 1983.

The appellant is admittedly a person who had serious problems with his mental health, both before as well as at the time of the commission of the offences in question. There is in fact some family history about it. His mother had been treated in the Psychiatric Institutions in 1963 at the age of twenty-five and continued being treated thereafter for some years. After  
15 his initial examination by Dr. Malekkides the appellant was referred to and examined by the Committee for the Examination of the Physical Fitness of Soldiers, which on the 8th December 1983, granted to him a year's suspension of his military service, having been found suffering from acute paranoid reaction with  
20 elements of anxiety and depression of a psychosomatic personality, as stated on the temporary discharge document produced at the trial.

On the 10th of December 1983, he was discharged from the Psychiatric Institutions of Athalassa and recommended for  
25 observation and treatment as an out-patient. It has to be pointed out that according to the medical experts the appellant, on the day he left his camp and committed these offences was suffering from a strong anxiety with paranoid ideas to the degree of panic that from moment to moment certain persons in his  
20 unit wanted to kill him. It is also to be noted that his paranoid ideas relate only to the environment of the military camp.

The appellant was re-examined at the Psychiatric Wing of the General Hospital, Nicosia, on the 13th April 1984, and it was found that he showed no paranoid elements and other  
25 psychic disturbances. His condition obviously had developed on account of his weakness to adapt himself to the environment of the army.

Whilst in prison the appellant was treated by Dr. Malekkides, a psychiatrist. He was found by him to have great difficulties

in communicating with the other inmates. He could not withstand the pressures of the prison and his mental health was deteriorating rapidly. He was withdrawn, isolated, paranoid. The doctor felt that further imprisonment could probably have permanent damage on his mental health. The appellant was removed from the Central Prisons to the Psychiatric Institutions at Athalassa on the 30th June 1984, and he was found by Dr. Mialekkides, who was treating him there that his condition became satisfactory and no disturbances of his thought or psychic manifestations were observed.

In passing sentence and in the extensive reasons given by the Military Court in justification thereof, although mention is made to the mental condition of the appellant, his said condition does not seem to have been given the appropriate weight as a mitigating factor.

We are not innovating when we say that the mental state of a person constitutes a mitigating factor in determining the sentence and the appropriate weight has to be given to it. Nor is it devoid of authority when we say that a person suffering from a mental handicap at the time of the commission of an offence, be it permanent or temporary, is entitled to leniency. (See Píkis, "Sentencing in Cyprus" and the authorities therein cited). In our view it would also be cruel to permit the aggravation of the condition of an offender by a long term in prison, which stay, may as Dr. Malekkides states in his report, regarding the appellant, cause him irreparable damage.

Having examined the case in its totality we have come to the conclusion that in the very exceptional circumstances with regard to the mental state of the appellant the sentences of three years' imprisonment, imposed are manifestly excessive and they must therefore be reduced, accordingly to one year's imprisonment for counts 1 and 2, to run concurrently with the other lesser sentences from the date they were imposed.

The appeal therefore is allowed on these terms.

*Appeal allowed.*