

1985 March 21

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

NICOS COSTA NICOLAOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4598).

Criminal Law—Sentence—Shop-breaking—Thirty-one shop-breakings within a period of two months—Young age of offender not an excuse for such kind of behaviour—Need to protect property of law abiding citizens by the enforcement of the Law—Court of Appeal very reluctantly not increasing sentence of three years' imprisonment—Which was made to run from date of dismissal of appeal. 5

The appellant, a soldier serving in the National Guard, pleaded guilty to the offence of shop-breaking contrary to s. 294 (a) of the Criminal Code Cap. 154 and was sentenced to three years' imprisonment. In passing sentence the Military Court took into consideration another 30 outstanding offences of similar nature to which the appellant pleaded guilty. These offences were committed by him over a period of two months—between the 29th November, 1983 and 31st January 1984—and fetched to the appellant valuables and monies amounting to £2,170 out of which £1,462 only were recovered. 10 15

Upon appeal against sentence:

Held, that thirty-one shop-breakings within a period of two months is something beyond comprehension; that organized shopbreaking of this or of any kind cannot be tolerated and let it be understood that the young age of the offender cannot afford an excuse for such kind of criminal behaviour; that protection of the property of the law abiding citizens can only be achieved by the enforcement 20 25

of the Law, such enforcement falling squarely on the shoulders of the Courts who must not flinch in discharging such duty and it is very reluctantly that this Court does not increase the sentence; and that, therefore, the appeal
5 must be dismissed but in the circumstances the sentence shall run as from to day.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Nicos Costa Nicolaou who
10 was convicted on the 22nd November, 1984 by the Military Court sitting at Nicosia (Case No. 499/84) on one count of the offence of shop-breaking contrary to section 294 (a) of the Criminal Code, Cap. 154 and was sentenced to three years' imprisonment.

15 *Ph. Ioannides*, for the appellant.

P. Ioulianos, for the respondent.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Loris.

20 LORIS J.: The present appeal is directed against the sentence of three years' imprisonment imposed by the Military Court on the 22nd November, 1984 on the appellant, a soldier serving in the National Guard, for the offence of shop-breaking contrary to s. 294 (a) of the Criminal Code Cap. 154. In passing sentence the Military Court took in-
25 to consideration another 30 outstanding offences of similar nature to which the appellant had pleaded guilty.

The appellant who was born in April 1965 joined the National Guard on the 13th January, 1983; after service in the National Guard of about ten months the appellant
30 in pursuance of a well prepared plan with other fellow soldiers was leaving barracks at night time in the company of another soldier—not always the same—and being equipped with shop-breaking implements they were proceeding to various places from Zakaki village of Limassol District, to
35 Paphos Town but mostly to Limassol Town, where they were breaking and entering into shops, offices, petrol stations, confectioneries even pharmacies stealing therefrom valuables and monies which were later shared between them-

selves. The appellant committed, over a period of two months between the 29th November, 1983 up to 31st January, 1984, when they were caught by the Police, 31 breakings and stealings which fetched to him valuables and monies amounting to £2,170 out of which £1,462 only were recovered. 5

Counsel appearing for the appellant before the Military Court pleaded in mitigation the age of the appellant, his clean record, his repentance indicated by his voluntary statement in which he had made a clean breast, and invited the Court to treat the appellant who is engaged to be married as leniently as possible. 10

The Military Court after hearing the facts and circumstances of this case and after considering the personal and extenuating circumstances for the appellant as set out in the address of Counsel in mitigation and the Social Investigation report, imposed a sentence of three years' imprisonment giving emphasis to the seriousness of the offences and their prevalence nowadays, stressing at the same time their number and the fact they were committed in pursuance of a well prepared and organised plan. 15 20

It is obvious from the judgment of the Military Court that without overlooking the reformatory character of punishment they were more concerned with the protection of the community. 25

The learned counsel for the appellant elaborated on the principles of sentencing and forcefully argued that the sentence is manifestly excessive.

Fully realising the difficulties in the case which counsel for the appellant had to handle, we gave the matter our best consideration and after hearing what counsel had to say we found it unnecessary to call on the other side. 30

Thirty-one shop-breakings within a period of two months is something beyond comprehension; organized shop-breakings of this or of any kind cannot be tolerated and let it be understood that the young age of the offender cannot afford an excuse for such kind of criminal behaviour. 35

The shop owner, the law abiding citizen, who locks his

shop at closing time must rest assured that next morning when he will be reopening same in the ordinary course of his business, he will find all his merchandise intact and the money he has earned working hard during the day, secure in his till.

And this end can only be achieved by the enforcement of the Law, such enforcement falling squarely on the shoulders of the Courts who must not flinch in discharging such duty.

We must say that we have considered seriously in this case whether we should increase the sentence; at the end we have decided, very reluctantly not to do so.

The present appeal is dismissed but in the circumstances we consider it appropriate that the sentence imposed should run as from today.

Appeal dismissed.