

1986 November 25

[TRIANAFYLIDES, P, DEMETRIADES, SAVVIDES, JJ]

AZIZ SALIM ABDALLAH,

Appellant,

v

THE REPUBLIC,

Respondent

(Criminal Appeal No 4726).

Sentence — Possessing and trafficking in narcotics (1073 grams of heroin) — Old age — Though generally a mitigating factor it can carry little weight in cases such as this, where the paramount and overriding considerations are the punitive and deterrent effect of the sentence — Four years' imprisonment on appellant, an alien 74 years' old — Upheld

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This appeal is directed against the aforesaid sentence for the aforementioned offence

The appellant, who is an alien, is 74 years old

Held, dismissing the appeal, that though old age is generally a mitigating factor, it carries very little weight in relation to an offence, such as the present one, indeed, in cases such as this, the paramount and overriding considerations are the punitive effect and deterrent effect of the sentence

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Appeal dismissed

Appeal against sentence.

Appeal against sentence by Aziz Salim Abdallah who was convicted on the 13th January, 1986 at the Assize Court of Lamaca (Criminal Case No. 11708/85) on one count of the offence of possessing and trafficking in narcotic drugs contrary to sections 2, 3, 6(1)(3), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No. 29 of 1977) and was sentenced by Papadopoulos, P.D.C., Constantinides, S.D.J. and Eliades, D.J. to four year's imprisonment.

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Appellant appeared in person.

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

5 TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant, who appears in person, has made the present appeal from the Central Prisons on 17 January 1986, against the sentence of four years' imprisonment which was passed upon him on 13 January 1986, but with effect as from 11 October 1985, in respect of the offences of possessing and trafficking in narcotic drugs.

10 The said offences were committed in Larnaca on 11 October 1985. The appellant was arrested then and has been in custody ever since.

The narcotic drug which was found in the possession of the appellant were 1073 grams of heroin.

15 The appellant has argued, mainly, that the sentence which was passed upon him as aforesaid is manifestly excessive, especially in view of his age and his bad health.

20 On the charge the age of the appellant is given as sixty-six years but today he told us that he is older and that he is in fact seventy-four years old.

As regards the state of his health we do not have before us any medical certificate showing that the appellant is suffering from a particular illness

25 This is not, therefore, one of those cases in which we are called upon to take an exceptional course in favour of an appellant due to a serious and rapidly deteriorating health problem.

30 There can be no doubt that old age and a generally bad state of health are normally mitigating circumstances to be duly weighed when sentence is assessed but, in our opinion, such mitigating circumstances can carry very little weight when sentence is being assessed in relation to an offence involving narcotic drugs, such as the present one, because in a situation of this nature the paramount and overriding considerations are the punitive effect and the deterrent effect of the sentence to be imposed, in view of
35 the increasing prevalence of narcotic drug offences both in Cyprus and internationally and the urgent need to stamp out such offences for the benefit of humanity as a whole and of the people of Cyprus in particular.

We have, therefore, decided that there does not exist adequate reason warranting interference on our part with the sentence which has been imposed on the appellant.

Any matter relevant to the age and health of the appellant, as well as the fact that he is an alien and he is serving a sentence of imprisonment away from his country and the members of his family, are possibly matters to be examined in the context of the exercise of the powers vested in the President of the Republic by Article 53.4 of the Constitution.

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In the result this appeal is dismissed and the sentence passed upon the appellant is to continue to run as from 11 October, 1985.

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Appeal dismissed.