1988 October 13

(SAVVIDES, KOURRIS, BOYADJIS, JJ.)

ANDREAS ANTONIADES,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 5014).

Sentence — Indecent assault on female, contrary to sections 151 and 35 of the Criminal Code, Cap. 154 — Appellant, a man of 60, and a retired Headmaster of Elementary Education — Offence committed at school before his retirement on a girl aged 12 — Nine months' imprisonment — Neither wrong in principle nor manifestly excessive.

The appellant, a man aged 60, was, at the time, serving as Headmaster of Elementary Education. He was giving private lessons to the complainant, a girl aged 12, in the house of the latter's aunt. Sometimes, the complainant accompanied the appellant at school for obtaining photocopies of material helpful to her studies.

On one of such occasions, the appellant, having entered the office of the school with the complainant, closed the window and the door and started assaulting the complainant by caressing her breasts, buttocks and private parts. The assault continued for half an hour, when it was interrupted by a knock on the door by complainant's friends, who were looking for her.

The appellant expressed repentance. He pleaded guilty to the charge. His record is clean. In passing sentence, the trial Court treated the fact, that such an offence is not prevalent, as a mitigating factor.

Held, *dismissing the appeal:* (1) *Felekkis v. The Police* (1968) 2 C.L.R. 151 cannot be considered as a test of proper sentence in a case of indecent assault on a female.

(2) The trial Judge rightly expressed the opinion, when dealing

with a submission by counsel for the accused that the fact that the appellant had been an educationalist for so many years should be taken in his favour that such fact might operate as well adversely upon the appellant calling for a deterrent sentence.

(3) Though all personal matters pertaining to the offender should be taken into consideration, they should not be allowed to outweigh the requirements of properly applying the law in that particular case. Moreover a sentence must have the effect of indicating in the most practical way the seriousness of the offence and operating as a deterrent to other potential offenders.

(4) There is no doubt that the circumstances of this case are such as to bring this case within the frame of serious cases of indecent assault on a female. Such circumstances are the position of the appellant, the age of the girl, the place where the offence was committed, the nature of the assault and its duration.

(5) It is with great reluctance in this case that this Court has decided not to exercise its power under section 145.2 of Cap. 155 and increase the sentence or direct that it should run from today.

Appeal dismissed.

Cases referred to:

Felekkis v. The Police (1968) 2 C.L.R. 151;

Attorney-General v. Vasiliotis, alias Kaizer, and Another (1967) 2 C.L.R. 20.

Appeal against sentence.

Appeal against sentence by Andreas Antoniades who wa convicted on the 24th June, 1988 at the District Court of Lamac (Criminal Case No. 100/88) on one count of the offence o indecent assault on a female contrary to sections 151 and 35 of th Criminal Code, Cap. 154 and was sentenced by Arestis, D.J. t nine months' imprisonment.

M. Hadjichristophi with G. Georghiou, for the appellant.

P. Clerides, for the respondents.

SAVVIDES J. gave the following judgment of the Court. This is an appeal against a sentence of nine months' imprisonmen imposed upon the appellant by the District Court of Lamaca after a plea of guilty on a charge of indecent assault on a female contrary to the provisions of sections 151 and 35 of the Criminal Code, Cap. 154 for which a sentence of two years' imprisonmen

and/or a fine of £1500 is provided.

The facts of the case which were placed before the learned trial Judge and were taken into consideration by him in imposing the sentence complained of, and which have not been contested by the appellant are as follows:

The appellant is 60 years old and he was a teacher since 1952 and a headmaster of Elementary education since 1962 till January, 1988 when he retired.

The complainant, a girl of 12 years of age, was a student at the school in which the appellant was a Headmaster and she graduated in 1987. As the complainant came to Cyprus during the school year 1986-87 she had certain problems with her lessons and her parents decided to assist her by providing lessons and for such purpose they requested the appellant to help them.

As during the school year 1986-87 the complainant was one of his pupils and he was not allowed to give private lessons to her arangements were made for lessons to start in September, 1987. The appellant used to visit the house of the aunt of the complainant for the purpose of such lessons which were given in the presence of her aunt.

As from October, 1987 the appellant, after the private lessons in the house were finished, he used to ask the complainant to accompany him to his office at the school for the purpose of supplying her with ptotocopies or other material useful for her studies.

On 6th November, 1987, the accused visited, as usual, the house of the aunt of the complainant and after a while he asked the complainant with the consent of her aunt to accompany him to his office to give her certain photocopies useful for her study. The complainant followed him to his office at the school. As soon as they entered the office, the appellant closed the door and also kept closed the only window of the office which is facing the rear yard. He started the lesson which lasted about twenty minutes and then he went near the complainant and pulled up the top part of the athletic form she was wearing, took off her brassiere and started caressing her breasts. Then he put his hand under the trouser of her athletic form and started caressing her buttocks and then her legs and her private parts over her pants and was pulling her all the time closer to him. This lasted for about half an hour when some

fellow mates of the complainant who were looking for her went to the school to find her. They saw the light in the office of the complainant and they knocked at the door and waited for an answer. The appellant asked the complainant to put her clothes in order which the complainant did. The appellant opened the door and the complainant left with her friends but in a state of anxiety.

On the following day the complainant who was in a condition of unrest and crying when asked by her friends what happened she related to them the incident between her and the appellant. Her friends advised her to refer the matter to her parents and as she was hesitating they did so themselves by mentioning it to the complainant's mother to whom the complainant later in the day confessed what had happened and the case was reported to the police on the 11th November, 1987.

On the 12th November, 1987, the appellant was arrested by virtue of a warrant of arrest and when the reason of his arrest was explained to him he said that there must had been a misunderstanding as he had never committed such a thing. In a written statement obtained from him he gave various inconsistent explanations in connection with the complaint against him by which he was making insinuations that the complainant provoked him. Later in the same day he was formally charged and he admitted and expressed his regret with a request to meet the parents of the complainant to apologize to them and ask for their forgiveness.

The learned trial Judge having taken into consideration the seriousness of the case in the light of the young age of the complainant and the position of the appellant at the time when the offence was committed as an educationalist and all mitigating circumstances raised by his counsel which consisted of the fact that the appellant was 60 years of age with a clean criminal record with leading social activity extending over a number of years, a fact mentioned in the report of the Welfare Officer, his offer to the society for 35 years and more which was substantial, his social and family background, his repentance, the fact that he pleaded guilty to the charge without embarrassing the complainant to come forward and give evidence in the witness box, imposed upon him a sentence of nine months' imprisonment.

The grounds of appeal raised by learned counsel for the appellant are:-

That the sentence is manifestly excessive and that the trial Court, as it appears on the face on the judgment, thought fit to impose such sentence as a deterrent sentence, and did not give due weight to the mitigating circumstances put forward.

Learned counsel for the appellant in an elaborate manner commented on the decision of the trial Court and in particular the reference made by the Court to the case of *Felekkis v. The Police* (1968) 2 C.L.R. 151 referred to by the learned trial Judge in his judgment and which the trial Judge took into consideration as a guide line on the question of sentence of offences of this nature.

We agree with the submission of counsel for the appellant that *Felekkis* case (supra) cannot be considered as a test of proper sentence in a case of indecent assault on a female. In Felekkis case the accused was convicted and sentenced for abduction and indecent assault. The trial Court imposed sentences of two years and 18 months' imprisonment, respectively. When the case came up before the Supreme Court on appeal the appeal was allowed and the sentence was reduced to one year's imprisonment for abduction and no sentence was imposed on the count for indecent assault as the conviction for indecent assault rested on the same set of facts.

In arguing his ground of law that the sentence imposed upon the accused was in the form of a deterrent sentence learned counsel for the appellant drew our attention to the judgment of the trial Court in which the learned trial Judge stated that bearing in mind the fact that the appellant was an educationalist for many years, a fact which though operating in favour of the appellant at the same time it was a matter which might account against the appellant why a deterrent sentence should not be imposed in such cases so that the threat of a serious sentence deters others in the position of the appellant to commit such offences.

We disagree with counsel for the appellant that the learned trial Judge did in fact impose such a sentence motivated by the thought that it should have a deterrent effect. What the learned trial Judge did in his judgment when dealing with the submission of counsel for appellant that the fact that the appellant had been an educationalist for so many years should be taken in his favour, was to express, rightly in our view, the opinion that such fact might operate as well adversely upon the appellant calling for a deterrent sentence. In fact the learned trial Judge in passing sentence on the

appellant took into consideration in his favour amongst the other mitigating circumstances the fact that offences of this nature are not prevalent offences.

It has been stressed time and again that in an appeal against sentence the Court of appeal does not interfere with the sentence imposed by a trial Court unless satisfied that the sentence is manifestly excessive or wrong in principle or insufficient in the circumstances of the case as the case may be.

As it was stressed in *Attorney-General v. Neophytos Nicola Vasiliotis alias Kaizer and Another* (1967) 2 C.L.R. 20, all personal matters pertaining to the offender should be taken into consideration in imposing sentence on the particular offender «but they should not be allowed to outweigh the requirements of properly applying the law in that particular case. Moreover a sentence must have the effect of indicating in the most practical way the seriousness of the offence which we are here concerned with; and/or keeping as a deterrent to other potential offenders».

We have before us what the learned trial Judge has taken into consideration in imposing the sentence appealed from and also the mitigating factors advanced by counsel for the appellant both before the trial Court and before us. The fact that offences of this nature are not prevalent was also taken into consideration in mitigation by the Court. Nevertheless there is no doubt that the circumstances of this case are such as to bring this case within the frame of serious cases of indecent assault of a female. Such circumstances are the position of the appellant as a Headmaster of Elementary school to whom parents entrust their children for their education and the building up of their character. Another factor is that the offence was committed on a young school girl of 12 years whom he took to his office at the school, he guided her in, he closed the door and kept the window close and started the indecent advances against her and committed the offence to which he pleaded guilty. Furthermore the nature of the indecent assault, its duration, which, lasted for a considerable time and was interrupted only when the school mates of the complainant knocked the door of the office calling the appellant by name, are matters which could not have been ignored.

Bearing in mind all the surrounding circumstances and all relevant factors both touching the seriousness of the offence and the grounds in mitigation ably advanced by learned counsel for the

appellant and without loosing sight of the principle that the sentence should fit not only the offence but also the offender we have reached the conclusion that the sentence imposed by the learned trial Judge is neither manifestly excessive nor wrong in principle to enable us to reduce it. It is with great reluctance in this case that we have decided not to exercise our power under section 145.2 and increase the sentence or direct that it should rum from today.

In the result this appeal is dismissed.

Appeal dismissed.