1988 October 24

(SAVVIDES, KOURRIS, BOYADJIS, JJ)

1 MOHAMMED M M DEWEDAR
2 MOUSA EL HADY HAGGAG,

Appellants,

v

THE REPUBLIC,

Respondent

(Criminal Appeals Nos 4857 and 4858)

Sentence — Possessing and trading in controlled drugs (416 5 grams of heroin) — 5 years' on appellant in Appeal 4857 and 7 years imprisonment on appellant in Appeal 4858 — Not manifestly excessive

Sentence — Disparity of — Test applicable — Georghiou and Others v The Republic (1986) 2 C L R 109 adopted

Appellant in Appeal 4857 was sentenced to 5 years' and appellant in appeal 4858 to 7 years' imprisonment for possessing and trading in controlled drugs (heroin)

The appellants had delivered 416 5 grams of heroin to ex accused 1 and 2 for the purpose of taking the heroin to Germany

Ex accused 1 was sentenced to 3 1/2 years' and ex accused 2 to 2 1/2 years' imprisonment. It must be noted that these ex accused pleaded guilty and gave information to the Police, leading to the arrest of the appellants They, also, gave evidence at the trial against the appellants

Appellants' complaints are that the aforesaid sentences are manifestly excessive per se and that there had been disparity of sentences

Held, *dismissing the appeals*: (1) In the light of the test laid down in *Georghiou and Others v The Republic* (1986) 2 C L R 109, the ground in respect of the disparity fails

(2) Possession and trading in drugs is a public and social menace

and a social problem and the Court should deal with them severely. The sentences are not manifestly excessive.

Appeals dismissed.

Cases referred to:

Koukos v. The Republic (1986) 2 C.L.R. 1;

Georghiou and Others v. The Republic (1986) 2 C.L.R. 109.

Appeal against sentence.

Appeal against sentence by Mohammed M. M. Dewedar and Another who were convicted on the 18th February, 1987 by the Assize Court of Larnaca (Criminal Case No. 14412/86) on two counts of the offence of unlawfully pessessing controlled drugs contrary to sections 2, 3, 6(1)(2), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law 29/77 (as amended by Law 67/83) and on two counts of the offence of supplying controlled drugs to other persons contrary to sections 2, 3, 5(1)(b)(3)(a), 30 and 31 of the above law and were sentenced by Papadopoulos, P.D.C. Constantinides, S.D.J. and Eliades, D.J. to concurrent terms of imprisonment as follows: Appellant 1 to five years' imprisonment on each count and appellant 2 to seven years' imprisonment on each count.

Ch. Solomonides, for the appellants.

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

SAVVIDES J.: The judgment of the Court will be delivered by Mr. Justice Kourris.

KOURRIS J.: Both appeals, which were heard together, were against the conviction and the sentences imposed by the Assize Court of Larnaca on each of the appellants.

Appellant in appeal No. 4857 was sentenced to five years' imprisonment for possessing and trading in drugs. For the purposes of this appeal this appellant will be referred to as appellant 1. Appellant in appeal No. 4858 was also convicted for possessing and trading in drugs and was sentenced to seven years' imprisonment. For the purposes of this appeal this appellant will be referred to as appellant 2.

During the hearing of the appeal both appellants abandoned

their appeal against conviction and the hearing proceeded against sentence only.

The submission of learned counsel for the appellants that the sentences imposed on the appellants are manifestly excessive is twofold:

(a) That it is manifestly excessive on its own merits; and

(b) That it is manifestly excessive in comparison to the sentence imposed on ex-accused 1 and ex-accused 2 i.e. that there is disparity of sentences.

The main argument of counsel for the appellants against the sentences on the two appellants is that the trial Court in passing sentence did not give due weight with regard to the personal circumstances of the appellants. He said that the trial Court overlooked very serious mitigating factors with regard to both appellants. He stressed before us that appellant 2 comes from Egypt and he is the sole supporter of his family which consists of his old father and mother and he also pays the fees and maintains his three brothers who attend a university in Cairo. With regard to appellant 1 he said that he is a first offender, comes from Egypt and is married to a refugee from Morphou with two minor children, one boy three years old and one girl 16 months old. He also said that he is the sole supporter of his family.

We have considered the submission made on behalf of the appellants and we find that the trial Court did in fact take into consideration all mitigating factors put forward by their counsel. We do not propose to set out in detail the facts leading to the arrest and the conviction of the two appellants save so far as are relevant for the purposes of these appeals.

The two appellants were indicted before the Assize Court of Lamaca together with another two persons who for purposes of convenience will be referred to as ex-accused 1 and ex-accused 2.

Ex-accused 1, a certain Schaffer, and ex-accused 2, a certain Ward, were leaving Cyprus for Germany and having been searched at the customs a quantity of heroine amounting to about 415 grams was found in the possession of ex-accused 1. Ex-accused 1 gave information to the police leading to the arrest and consequent conviction of both appellants. The trial Court took into consideration the fact that both ex-accused 1 and 2 pleaded guilty to the offences charged, gave information to the police

leading to the arrest of both appellants and in passing sentence upon these two accused sentenced ex-accused 1 to 3 1/2 years' imprisonment and ex-accused 2 to 2 1/2 years' imprisonment It should be noted that had these two ex-accused not given information to the police the two appellants would not have been arrested and convicted. It should be noted that the two ex-accused gave evidence against the appellants at their trial.

We have also considered the question of disparity of sentence raised by learned counsel for the appellants. The question of disparity of sentence was examined by the Supreme Court in the case of *Koukos v. The Police* (1986) 2 C.L.R. 1 and in the case of *Georghiou and Others v. The Republic* (1986) 2 C.L.R. 109 and I need not state the principles laid down in the two cases suffice it to say that in the case of *Georghiou* (supra) at p.118 is stated:

> «The test laid down was that when a Court was considering an appeal against sentence based on disparity what was relevant was whether right thinking members of the public knowing all the facts and looking at what had happened would say that something has gone wrong here in the administration of justice which has resulted in one or more convicted persons being treated unfairly.»

It should be noted that both appellants possessed 416.6 grams of heroine which they delivered to ex-accused 1 and 2 for the purpose of delivering this quantity to purchasers in Germany.

This Court does not assess but reviews the sentence imposed by the trial Court. It does not interfere with a sentence, unless such interference is justified when the sentence is manifestly excessive or when it is wrong in law.

We are satisfied that the sentences imposed upon the appellants are not manifestly excessive. This Court has repeatedly pointed out that possession of drugs is a very serious offence and, in particular possession for the purposes of supplying them to others. Possession and trading in drugs is a public and social menace and a social problem and the Courts should deal with them severely.

Having considered all the relevant material placed before the Assize Court we find that the sentences imposed on the appellants are not manifestly excessive and that the Assize Court did not err

in principle. We are also satisfied, in view of what has been stated hereinabove, that in the circumstances of the present case there has been no disparity of sentences.

The appeals are, therefore, dismissed.

5 *Appeals dismissed.*