1988 November 17

(PIKIS, PAPADOPOULOS, HADJITSANGARIS, JJ.)

1. YIANNAKIS SAVVA DEMETRIOU «KOKKINOS»,
2. STELIOS COSTA DEMOU,

Appellants,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeals Nos. 5002, 5003).

Sentence — Burglary and theft of shotguns, contrary to sections 294(a) of the Criminal Code, Cap. 154 and sequential illegal carrying of the shotguns — Sixteen other similar offences involving theft of property in excess of £1,000.-, of which a small portion was recovered by the owners, were taken into consideration in the case of appellant 1, whilst four other similar offences, involving theft of property valued at £10,000.-, half of which was recovered by the owners, were taken into consideration in the case of appellant 2 — Appellants, aged 19 and 20 respectively, had a burdened record — Four years' imprisonment on appellant 1 for the first of the said offences and one year for each of the other offences — Two years' imprisonment on appellant 2 for the first of the said offences and one year for each of the other offences — Sentences on appellant 2 not excessive — Sentences on appellant 1 not manifestly excessive.

Appellant 1 was sentenced to four years' imprisonment for the aforesaid burglary and one year for each of the remaining offences.

Appellant 2 was sentenced to two years' imprisonment for the aforesaid burglary and one year for each of the remaining offences.

In passing sentence on appellant 1 the trial Court took into consideration sixteen similar offences, involving theft of property valued in excess of £11,000.-, of which only a small proportion was recovered by its owners.

In passing sentence on appellant 2, the trial Court took into consideration four other similar offences, involving theft of property valued at £10,000.-, only half of which was restored to its owners.

Notwithstanding their young age (19 and 20 respectively) both appellants were burdened with previous convictions, especially appellant 2.

Held, *dismissing the appeals:* (1) The Court invariably ponders the reformatory effect that punishment may have on the future ways of a young offender. Sentencing is a compound process that involves the balancing of a multitude of factors, ultimately designed to be socially beneficial. Everybody stands to gain from the change of the criminal ways of young members of society. But faced with the absence of any visible signs of change and lack of response to earlier reformatory sentencing measures, the Court cannot stand idle.

The sentence on appellant 2 is not excessive. The sentence on appellant 1, though severer than this Court would be inclined to approve, is not manifestly excessive, so as to justify intervention by this Court.

Appeals dismissed.

Cases referred to:

Ioannou and Another v. The Police (1986) 2 C.L.R. 149;

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

Savvides v. The Republic (1987) 2 C.L.R. 70;

Antoniades v The Police (1986) 2 C.L.R. 21;

Philippou v. The Republic (1983) 2 C.L.R. 245.

Appeals against sentence.

Appeals against sentence by Yiannakis Savva Demetriou and Another who were convicted on the 23rd May, 1988 at the Assize Court of Limassol (Criminal Case No. 6544/88) on one count each of the offence of burglary and theft contrary to sections 294(a) and 20 of the Criminal Code, Cap. 154 and on a number of counts of the offence of carrying a shot-gun contrary to sections 7(1)(a)(6)(a) and 28 of the Firearms Law, 1974 (Law 38/74) and were sentenced by Chrysostomis, P.D.C., Anastassiou, S.D.J. and N. Nicolaou, D.J. as follows: Accused 1 to four years' imprisonment on the first count and to one year's imprisonment on each of the other counts; Accused 2 to two years' imprisonment on the first count and to one year's imprisonment on each of the other counts, the sentences to run concurrently

P. Messaritis, for the appellants.

S. Matsas, for the respondent.

PIKIS J. gave the following judgment of the Court. This is an appeal against sentence made by two of four co-accused before the Assize Court of Limassol, convicted on a number of related counts of burglary and theft of sporting shot-guns and sequential illegal carrying of the guns. In addition to punishing them for the aforementioned offences the Court took into consideration, on the application of the appellants, a number of similar offences committed by the appellants. The offences were of a similar nature involving, primarily, burglaries and theft of valuables worth considerable amounts. In the case of appellant 2, sixteen such offences were taken into consideration, and four in the case of appellant 1. The charges preferred before the Assize Court involved breaking and entering into a petrol station during night time and, stealing therefrom of four sporting guns, the value of which exceeded two thousand pounds. The crime was planned and executed in concert and resulted in the occasion of considerable damage to the owner. The crimes taken into consideration at the instance of appellant 2, again involved the theft of property of considerable value in the region of ten thousand pounds. Less than half was eventually restored to the owners. The offences committed by appellant 1, again involved property of considerable value, exceeding one thousand pounds, of which only a small portion was recovered by the owners.

Notwithstanding their youth, aged 19 and 20 respectively, they have a burdened record, especially appellant 2. His proclivity to theft brought him before the courts of law early on in life. His committal to the Reform School had no noticeable effect on his behaviour; nor, regrettably it must be added, his sentence to two years' imprisonment in 1985 for the commission of similar offences. Appellant 1 is burdened with one previous conviction on which occasion he was sentenced to a fine and bound-over for a period of time to keep the laws. In social investigation reports, submitted before the Assize Court with the consent of the appellants, the personal and family history of both is explained in some detail. The stealing of property has, as it may be gathered, become a settled aspect of their life, together with the consumption of narcotics to which they appear to be addicted. Recourse to theft has been, it seems, a way of subsidising their living expenses and ill-chosen habits.

Counsel for the appellants made reference to a number of cases

(particularly to the cases of *Ioannou and Another v. Police;** *Koukos v. Republic;*** *Savvides v. Republic,****) in support of the submission that youth is a factor that makes it especially necessary to individualise sentence. Also counsel made reference to the principles applicable on the sentencing of young offenders referred to and expounded in *Sentencing in Cyprus***** and *Principles of Sentencing*******.

The resolve of the appellant to reform will not be enhanced, counsel argued, by lengthy incarceration. The likelihood of reform through the medium of the sentence chosen, and the length of it, should be uppermost in the mind of the Court in dealing with young offenders. Counsel submitted that sentence should be individualised to the extent necessary to help young persons who have strayed from the path earmarked by the law to reform - a goal beneficial to the accused themselves, and society. Probation, counsel added, is a course often chosen by the courts as a means of reform of young offenders. The principles of sentencing relevant to the punishment of young offenders referred to by counsel, find expression in a good number of cases and can be accepted as a settled aspect of the law. The Court invariably ponders the reformatory effect that punishment may have on the future ways of a young offender.

Nevertheless, if a particular species of non custodial punishment has failed to produce the anticipated results, imprisonment is an obvious alternative. Sentencing, it must be reminded, is a compound process that involves the balancing of a multitude of factors, ultimately designed to be socially beneficial. Everybody stands to gain from the change of the criminal ways of young members of society. But faced with the absence of any visible signs of change and lack of response to earlier reformatory sentencing measures, the Court cannot stand idle. Society, too, must be protected and the efficacy of the law must be sustained.

We cannot overlook what was noted by the Supreme Court in *Antoniades v. Police******* as a sad social reality that house-breaking

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* (1986) 2 C.L.R. 149.
** (1986) 2 C.L.R. 1.
*** (1987) 2 C.L.R. 70.
**** (p.37).
***** (Thomas, 2nd ed., p.18).
****** (1986) 2 C.L.R. 21

and shop-breaking offences have recently assumed proportions of a social evil. Indeed, many of the culprits are young persons, a fact that makes this reality extremely unpalatable. This is a fact that must be seen in context, in determining whether the sentence imposed on the appellants is, as submitted on their behalf, manifestly excessive.

Having duly reflected on every aspect of the appeal, we feel that the sentence imposed upon appellant 2 was in no sense excessive The sentence imposed on appellant 1, on the other hand, is longer than we would be disposed to impose had we been the trial Court. But that is not a reason for interfering with sentence. For this Court to intervene, we must conclude that the sentence is manifestly excessive. The element of excess as judicially noticed on previous occasions* must be glaring, such as to provide an objective basis for its ascertainment. The trial Court is the arbiter of sentence. It is uniquely placed to appreciate the needs of criminal justice and see to the effective application of the law.

The sentence imposed on appellant 1, severer though it is than what we would be inclined to approve, had we been in the position of the trial Court, is not manifestly excessive.

It is truly regrettable that young offenders of the age of the appellants have made such a poor start in life. They must appreciate that abiding by the law is not only an obligation to others but also an obligation to themselves. Else, how could they expect others to respect their rights.

The appeals are dismissed.

* *(See, inter alia, Philippou v. Republic (1983) 2 C L R. 245)*