1988 February 3

(A. LOIZOU, DEMETRIADES, PIKIS, JJ.)

PHOEBUS CONSTANTINIDES,

Appellant,

v.

THE POLICE,

Respondent.

(Criminal Appeal No. 4963).

Sentence — Interference by Court of Appeal — The concept of «manifestly excessive».

Sentence — Previous convictions — Whether offence of speeding similar to the offence of negligent driving — Question answered in the affirmative.

Sentence — Driving without due care and attention contrary to sections 8 and 19(1) of the Motor Vehicles and Road Traffic Law 86/72 — Fine of £30 and disqualification from driving a motor vehicle for two months — Two previous convictions for speeding — Facts disclosed a rather serious case of negligence — Disqualification justified.

The facts of this case sufficiently appear in the hereinabove headnotes.

Appeal dismissed.

Cases referred to:

Suleiman v. The Police (1963) 1 C.L.R. 106;

Lazarou v. The Police (1970) 2 C.L.R. 18;

Arneftis v. The Police (1970) 2 C.L.R. 185;

Havatzia v. The Police (1980) 2 C.L.R. 195;

Louroutziatis v. Republic (1983) 2 C.L.R. 125;

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

Appeal against sentence.

Appeal against sentence by Phoebus Constantinides who was

convicted on the 17th December, 1987 at the District Court of Famagusta (Criminal Case No. 1526/87) on one count of the offence of careless driving contrary to sections 8 and 19(1)(4) of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972) and sentenced by Hadjihambis, D.J. to pay £30.- fine and was further disqualified from holding or obtaining a driving licence for a period of two months.

G. Pelaghias, for the appellant.

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

A. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: On 17th December, 1987, the appellant was convicted on his own plea of careless driving (contrary to s.8 and s.19(1)(4) of the Motor Vehicles and Road Traffic Law, 86/72), and was fined £30.- and disqualified from driving a motor vehicle for two months. The facts of the case disclosed a rather serious case of negligence; the appellant overtook a vehicle at a time it was unsafe so to do and in consequence collided with an on-coming car. As a result the two vehicles were badly damaged while the complainant suffered superficial injuries.

The appeal is confined to that part of the sentence entailing the disqualification of the appellant. In the submission of counsel for the appellant, the addition of disqualification to the monetary punishment rendered the sentence manifestly excessive; and he invited us to set aside the disqualification. The sentence of the Court was not, we were told, the only punishment appellant suffered for his negligent conduct. He had to bear the cost of repairing his car amounting to about £2,000. On the other hand, the damage sustained by the complainant was made good by the insurers of the appellant. Seen in this light, we were told, the disqualification amounted to punishment disproportionate to the gravity of the offence. More so, as the appellant should be treated as a first offender having no previous convictions for negligent driving. Two recent previous convictions for speeding for which he was fined £35.- and £15.- respectively, left unaltered the complexion of his record as they did not constitute convictions for similar offences. The essence of his submission is that charges of negligent driving are distinguishable from charges of dangerous speeding, dissimilar in that speeding offences do not necessarily involve lack of due care.

We are unable to agree that convictions for speeding belong to a different category of offences than charges of negligent driving Both species of offences involve a breach of traffic law and regulations, designed to ensure safety on the roads, and ultimately serve the same purpose, to protect the public from abuse of the right to drive The previous convictions of the appellant disentitle him from the mitigating element ordinarily imported by a clean record Furthermore, they indicate that monetary sentences had failed to awaken the appellant to his responsibilities to heed traffic regulations and respect the rights of other users of the road In the face of this reality a disqualification order was an obvious means of dealing with the appellant in the interest of law enforcement The facts and record of the appellant made disqualification an evident mode of punishment that the trial Court could appropriately consider and impose*

The trial Court is the arbiter of sentence It is the responsibility of the trial Court to correlate the sentence to the facts of the case and individualize it in order that it may fit the offender as well The amenity of an Appellate Bench to interfere with sentence on the ground that it is manifestly excessive is confined to cases where the element of excess is glaring and as such objectively identifiable What the concept of «manifestly excessive sentence» connotes was discussed in *Philippou v Republic*** It was there said***

> «The element of excess must be such as to provide an objective basis for its ascertainment Such basis may be provided either by the facts of the case bearing no proportion to the sentence imposed or by the sentence being altogether out of range with sentences approved by the Supreme Court on previous occasions»

Interference by the Supreme Court with sentence outside these limits would inevitably weaken the position of trial Courts as the arbiters of sentence and undermine the confidence of trial Judges

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* *Yusuf Suleiman v The Police (1963) 1 C L R 106*
Savvas Lazarou v The Police (1970) 2 C L R 18
Matheos Chr Armeftis v The Police (1970) 2 C L R 185
Havatzia v The Police (1980) 2 C L R 195
Louroutziatis v Republic (1983) 2 C L R 125

** *(1983) 2 C L R 245*

*** *Page 250 lines 20 25*

in the exercise of their sentencing tasks. And the two tier foundation of the administration of criminal justice would be corroded.

In conclusion, we find no ground whatever justifying interference with the order of disqualification. The appeal is dismissed.

Appeal dismissed.