

1988 November 21

(SAVVIDES, HADJITSANGARIS & BOYADJIS, JJ.)

MICHALAKIS KATSOURIS,

*Appellant,*

v.

THE POLICE,

*Respondent.*

*(Criminal Appeal No. 5013).*

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*Sentence — Stealing of £17,455.- by agent, contrary to sections 255 and 270(e) of the Criminal Code, Cap. 154 — Appellant aged 58 with clean record and problems of health — Sum stolen paid to the owner — 18 months' imprisonment — In the circumstances reduced to 12 months.*

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*Sentence — Mitigating factors — Delay in taking or prolongation of criminal proceedings attributed to prosecution — As in this case the delay is attributed to the accused, it could not be treated as such a factor.*

The appellant stole the sum of £17,455.- which was part of the proceeds of the sale of 1500 cartons of «bic» pens which the complainant, Serafim Co. Ltd., entrusted to the appellant for sale and collection of their value.

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The appellant is 58 years old, has a clean criminal record and faces serious problems of health.

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The appellant repaid the aforesaid sum to the complainant.

The proceedings were filed on 10.3.1985, but the hearing was concluded on 23.6.1988. The delay, however, is attributed to the appellant.

The trial Court imposed on the appellant a sentence of 18 months' imprisonment.

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Held, *allowing the appeal*: (1) As the delay in concluding the trial is attributed to the appellant, it could not have been taken into consideration.

(2) Offences of this nature are very serious and severe sentences should be imposed because mistrust of confidence is a serious matter which tends to undermine the foundations of commercial transactions.

5 (3) However, this was a case of an isolated act of mistrust and, in the light of the mitigating factors (age of appellant, clean record, condition of health and repayment of the monies), the sentence should be reduced to 12 months' imprisonment.

*Appeal allowed.*

10 *Cases referred to:*

*Attorney-General v. Mavrokefalos* (1966) 2 C.L.R. 93;

*Attorney-General v. Vasiliotis* (1967) 2 C.L.R. 20;

*Attorney-General v. Lazarides* (1967) 2 C.L.R. 210.

*Azinas and Another v. The Police* (1981) 2 C.L.R. 9;

15 *R. v. Barrick* [1981] 1 Cr. App. Rep. 78;

*Weston* [1980] 2 Cr. App. Rep. 391;

*Strubell* [1982] 4 Cr. App. Rep. 300.

**Appeal against sentence.**

20 Appeal against sentence by Michalakis Katsouris who was convicted on the 23rd June, 1988 at the District Court of Nicosia (Criminal Case No. 6397/85) on one count of the offence of stealing contrary to sections 255 and 270(6) of the Criminal Code, Cap. 154 and was sentenced by Kallis, D.J. to eighteen months' imprisonment.

25 *P. Solomonides*, for the appellant.

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

30 SAVVIDES J. gave the following judgment of the Court. This is an appeal against the sentence imposed on the appellant in Criminal Case 6397/85 of the District Court of Nicosia on a charge of stealing by agent contrary to the provisions of s.255 and 270(b) of the Criminal Code, Cap. 154.

35 The appellant was found guilty on the charge after a hearing of the case and the sentence imposed upon him was that of 18 months' imprisonment.

The present appeal was originally directed both against conviction and sentence. At a later stage, however, the appeal against conviction was withdrawn by counsel for the appellant, very rightly in our view, and the appeal was heard only as far as sentence is concerned. 5

The particulars of the offence are to the effect that the appellant between 30th October, 1984 and 8th November, 1984 stole the sum of £17,455.- which was part of the proceeds of the sale of 1500 cartons of «bic» pens which complainant, Serafim Co. Ltd., entrusted to the appellant for sale and collection of their value. 10

The appellant was acting as a commission agent and he came to an agreement with a foreign company to sell to them for the account of the complainant a quantity of «bic» pens for a certain sum of money. Out of such sum which was collected by the appellant he detained the sum mentioned in the charge. 15

The complainant reported the case to the police and at the same time brought an action against the appellant which at some stage prior to the hearing was settled and the sum claimed was paid by the appellant to the complainant.

The appellant is 58 years old, has a clean criminal record and from what it appears in the judgment of the trial Court as well as in the file of the case he faces serious problems of health. 20

The criminal case against him was filed on the 10th March, 1985 and the hearing of the case was concluded on 23rd June, 1988. For such delay, however, neither the prosecution nor the Court are to blame as from what appears in the file of the case the adjournments were applied for by his counsel on some occasions due to his inability to attend the Court for reasons of health, on others due to absence abroad and on some occasions due to the unjustified absence of the accused which led to the issue of warrant of arrest against him. 25 30

It has been stressed by this Court on a number of occasions that delay in taking criminal proceedings and the prolongation of criminal proceedings for long time as a result of the delay of the prosecution to act promptly are factors which are taken into consideration in passing sentence upon an accused person. As mentioned, however, earlier in the circumstances of the present case such delay cannot be attributed to the prosecution but to the appellant. 35

We have paid due attention to the grounds of appeal raised by learned counsel for the appellant in mitigation of sentence. We have also heard the views of learned counsel for the Republic who expressed certain views as to whether due weight has been given  
 5 to the mitigating circumstances of the appellant and in particular to the fact that the appellant is 58 years old without any previous convictions, that he has serious problems of health and also that the amount misappropriated by the appellant has been paid prior to the hearing of the case.

10 The trial Court in passing sentence upon the accused made reference to a number of cases of this Court in respect of offences of similar nature and the observations of the Court in such cases and in particular the cases of *Attorney-General v. Mavrokefalos* (1966) 2 C.L.R. 93; *Attorney-General v. Vasiliotis* (1967) 2 C.L.R.  
 15 20; *Attorney-General v. Lazarides* (1967) 2 C.L.R. 210 and *Azinas and Another v. The Police* (1981) 2 C.L.R. 9.

We wish to point out however that the offences in the aforesaid cases relate to misappropriation of public funds or funds belonging to the public in general by a person who had the  
 20 immediate control and administration of such money and the conviction was in respect of a number of offences in each case.

The case of *Mavrokefalos* (supra) was the case of a secretary of a cooperative society and the offences committed by him were committed during a period in which offences of this nature were  
 25 prevalent and this appears in the decision of the Court of Appeal in that case at p.95.

In the case of *Lazarides* (supra) the accused was a civil servant, a post-office officer, who was habitually stealing envelopes containing cash or cheques and the Court of Appeal took seriously  
 30 into consideration the seriousness of such offences and substituted a sentence of imprisonment to that of a fine.

The case of *Azinas* (supra) was also a case in which the Commissioner of Cooperative Societies and one of his employees were involved in misappropriation and stealing of money  
 35 belonging to the cooperatism and they were facing 18 charges extending over a long period of time.

We agree with the principles concerning sentence expounded by the learned trial Judge in his judgment and his reference to the case of *Rex v. Barrick* [1985] 81 Cr. App. Rep. 78 in which

reference is made to a number of other decisions decided by the English Courts such as *Weston* [1980] 2 Cr. App. Rep. 391 and *Strubell* [1982] 4 Cr. App. Rep. 300 which was a case of stealing by accountant and which set out certain guide-lines as to how offences of this nature should be faced. 5

We have not the slightest hesitation in adopting the view that offences of this nature are very serious and severe sentences should be imposed because mistrust of confidence is a serious matter which tends to undermine the foundations of commercial transactions. 10

In the present case however, bearing in mind that the offence committed by the accused was an isolated act of mistrust of confidence entrusted to him by the complainant and that after the institution of civil proceedings against him he came into an arrangement with the complainant and paid the amount collected by him, that he is 58 years old and has a clear criminal record, that the condition of his health is bad we have come to the conclusion that the trial Court has not given due weight to these mitigating factors and we find that in the circumstances the sentence which otherwise might have been most appropriate and lenient for offences of this nature is manifestly excessive and that a sentence of 12 months' imprisonment would be more appropriate in the circumstances. 15  
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In the result the appeal is allowed and the sentence is reduced to one of 12 months' imprisonment. 25

*Appeal allowed. Sentence reduced to twelve months.*