

1965
April 16

PETER
GRAHAM
MACHINTOSH
BEECROFT
v
THE POLICE

[VASSILIADES, TRIANTAFYLIDIS AND JOSEPHIDES, JJ]

PETER GRAHAM MACHINTOSH BEECROFT,

Appellant,

v

THE POLICE.

Respondents

(*Criminal Appeal No 2766*)

Criminal Law—Sentence—Manifestly excessive—Offence against section 3 (1) (c) (2) (b) of the Firearms Law, Cap 57, as amended by Law 11 of 1959—Sentence of imprisonment—To be resorted to by the Court if, after due consideration, reaches the conclusion that no other sentence is appropriate in the circumstances—Fine sufficient in the circumstances of this case

The appellant, a young foreigner who had been in Cyprus for a very short while was convicted on his own plea of the offence of (a) carrying a weapon designed for the discharge of gas, contrary to section 3 (1) (c) (2) (b) of the Firearms Law, Cap 57, as amended by Law 11 of 1959 and (b) of the offence of possessing explosives, to wit three alive tear gas cartridges contrary to section 4 (4) (d) of the Explosive Substances Law, Cap 54 and was sentenced to pay a fine of £200 on the first count and £10 on the second. He appealed against sentence mainly on the ground that it was manifestly excessive.

Held, (I) it is clear to us that the facts of the case do not justify a sentence of imprisonment. Quite rightly, we think, the trial judge avoided it. This Court take the view that a sentence of imprisonment should only be resorted to if the Court, after due consideration, reaches the conclusion that no other sentence is appropriate in the circumstances. In this particular case a fine is clearly sufficient to meet the case.

(II) Taking into consideration all the circumstances as they appear on record including the fact that the article in question was being carried in a suitcase in the boot of the car, by a young foreigner who had been in the Island for a very short while, we think that an appropriate fine would be sufficient to meet the case. The fine imposed is, we think, manifestly excessive.

(III) In varying the sentence, we take into consideration the fact that the accused has been kept in custody for four days in

connection with this case, which together with a fine of £20 on count 1, would in our opinion, be sufficient, punishment in the circumstances.

(IV) We, would, therefore, allow the appeal and substitute the sentence of £200 on count 1 accordingly. As to the second count, we think that the carrying of this ammunition was so connected with the offence of carrying the pen itself as to fall in the same set of circumstances which make up the offence in the first count.

(V) We think that, in the circumstances the sentence imposed on count 1 covers the whole case and we would not pass an additional sentence on this count.

Appeal allowed. Sentence varied accordingly.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 22.3.65, at the District Court of Kyrenia, (Criminal Case No. 790/65) on two counts of the offence of (1) carrying a weapon designed for the discharge of gas contrary to s. 3 (1) (c) (2) (b) of the Firearms Law, Cap. 57, as amended by Law 11/59 and (2) of possessing explosive substances, contrary to s. 4 (4) (d) of the Explosive Substances Law, Cap. 54 and was sentenced by Savvides D.J. to pay a fine of £200 on the first count and a fine of £10 on the second count.

St. G. McBride, for appellant.

A. Frangos, counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, J.: This is an appeal from the sentence imposed on the appellant in the District Court, mainly on the ground that in the circumstances, the sentence is manifestly excessive. It is, we think, abundantly clear that the charge as amended, is, in fact, the charge intended to be brought against the appellant; the correct charge on the facts of the case. It is also clear to us that such facts do not justify a sentence of imprisonment. Quite rightly, we think, the trial Judge avoided it. This Court takes the view that a sentence of imprisonment should only be resorted to, if the Court, after due consideration reaches the conclusion that no other sentence is appropriate in the circumstances. In this particular case, a fine is clearly sufficient to meet the case.

1965
April 16

—
PETER
GRAHAM
MACHINTOSH
BECROFT
v.
THE POLICE

1965
April 16
—
PETER
GRAHAM
MACHINTOSH
BEECROFT
v.
THE POLICE

This is a kind of weapon which, as far as we are able to say, is the first of its kind to find its way to the Courts in Cyprus. This case, therefore, cannot be fairly connected with the prevalent offence of carrying firearms which, in the conditions now prevailing in the Island, must be considered on quite a different footing, although an offence under the same section of the Law. But for the present conditions, we feel that for carrying this kind of instrument in one's suitcase, in the circumstances in which the appellant in this case was carrying it, no court in Cyprus would impose a severe sentence. Taking into consideration all the circumstances as they appear on record, including the fact that the article in question was being carried in a suitcase in the boot of the car, by a young foreigner, who had been in the Island for a very short while, we think that an appropriate fine would be sufficient to meet the case. The fine imposed is, we think, manifestly excessive.

In varying the sentence, we take into consideration the fact that the accused has been kept in custody for four days in connection with this case, which together with a fine of £20 on count 1, would, in our opinion, be sufficient punishment in the circumstances. We would, therefore, allow the appeal and substitute the sentence of £200 on count 1, accordingly. As to the second count, we think that the carrying of this ammunition was so connected with the offence of carrying the pen itself as to fall in the same set of circumstances which make up the offence in the first count. We think that, in the circumstances, the sentence imposed on count 1 covers the whole case and we would not pass an additional sentence on this count.

In the result, the appeal is allowed ; the sentence of £200 is substituted by one of £20 fine on the first count ; and no sentence on the second count. The exhibits, of course, have been rightly forfeited under the Order of the trial Court.

Appeal allowed. Sentence varied accordingly.