

1970
Nov. 5

[VASSILIADES, P., TRIANTAFYLIDIS, LOIZOU, JJ.]

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GEORGE
HENRY BRIAN
v.
THE POLICE

GEORGE HENRY BRIAN,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3180).

Sentence—Fifteen months' imprisonment for stealing—Appellant a foreigner—Though effects of imprisonment on a foreigner more onerous this is not sufficient reason to interfere with sentence of imprisonment.

Foreigner—Sentence of imprisonment—Effect of sentence of imprisonment on a foreigner more onerous—See supra.

Dismissing this appeal against a sentence of fifteen months' imprisonment for stealing imposed by the trial Court on a foreigner (now appellant), the Supreme Court—

Held, (1). This Court has on previous occasions accepted that, indeed, the effects of imprisonment for a foreigner are more onerous (see *Wheeler and Others v. The Police*, 1964 C.L.R. 83 ; and *Marley v. The Republic*, 1964 C.L.R. 143). As it was, however, pointed out then this is not a reason for us to interfere with a sentence of imprisonment ; it is only a matter to be weighed in each case by the appropriate authority of the State, and at the proper time, during the currency of a term of imprisonment, in the same way as good conduct in prison and other relevant considerations are weighing in deciding whether or not to grant a remission of sentence.

(2) In the result the appeal is dismissed ; the sentence to run from the date of conviction.

Appeal against sentence dismissed.

Cases referred to :

Wheeler and Others v. The Police, 1964 C.L.R. 83 ;
Marley v. The Republic, 1964 C.L.R. 143.

Appeal against sentence.

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Appeal against sentence by George Henry Brian who was convicted on the 1st June, 1970, at the District Court of Famagusta (Criminal Case No. 3329/70) on three counts of the offence of stealing contrary to sections 262 and 20 of the Criminal Code, Cap. 154, and was sentenced by Pikis, D.J., to 15 months' imprisonment on the first count and no sentence was passed on him on the remaining counts.

Appellant appearing in person.

A. *Frangos*, Senior Counsel of the Republic, for the respondents.

VASSILIADES, P. : Mr. Justice Triantafyllides will deliver the judgment of the Court.

TRIANTAFYLLIDES, J. : The appellant, who is thirty years' old, appeals against the sentence of fifteen months' imprisonment imposed on him by the District Court of Famagusta on the 1st June, 1970, after he had pleaded guilty to charges of stealing a speed-boat as well as petrol tanks and other implements which were to be found in the speed-boat.

On the said date he admitted stealing, on the same occasion, another speed-boat ; in respect of that theft he had been charged in another criminal case which was taken into consideration in passing sentence in the present case.

The appellant committed all these offences together with a compatriot and friend of his, of approximately the same age, who was also sentenced to fifteen months' imprisonment, after he had pleaded guilty in respect of such offences ; he filed, too, an appeal against sentence but he later chose to abandon it.

The material circumstances are, briefly, as follows :

On the night of the 4th to the 5th May, 1970, the appellant and his friend escaped from lawful custody at the Famagusta Police Station—where they were being held in respect of another matter—and stole the two boats, together with the implements found in them, in an attempt to get away from Cyprus. They failed in doing so ; one of the boats was lost and never recovered and the other suffered considerable damage. The total damage caused, including the boat which was lost, amounts to approximately £1,500. The appellant and his friend were re-arrested and they at once admitted what they had done.

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The appellant has endeavoured to persuade us that we should reduce the sentence. In this connection he told us that it has come to his knowledge, while in prison, that other persons who caused more damage of approximately the same nature have received shorter sentences of imprisonment.

The extent of the damage caused is only one of the elements to be taken into account in assessing sentence ; and, bearing in mind all material considerations in this case, we do not find that the sentence of fifteen months' imprisonment, which was imposed on the appellant, is either wrong in principle or so excessive as to justify our interfering with it. We, therefore, have to dismiss his appeal.

The appellant stressed that being a foreigner in this country he is suffering more severely the effects of a prison sentence, because, *inter alia*, there are no relatives or friends of his here to visit him in prison. This Court has, on previous occasions, accepted that, indeed, the effects of imprisonment for a foreigner are more onerous (see *Wheeler and Others v. The Police*, 1964 C.L.R. 83 and *Marley v. The Republic*, 1964 C.L.R. 143). As it was, however, pointed out then this is not a reason for us to interfere with a sentence of imprisonment ; it is only a matter to be weighed in each case by the appropriate authority of the State, and at the proper time, during the currency of a term of imprisonment, in the same way as good conduct in prison and other relevant considerations are weighed in deciding whether or not to grant a remission of sentence.

In the result the appeal is dismissed ; the sentence to run from the date of conviction.

Appeal dismissed.