

1976
July 1

[TRIANTAFYLLIDES, P., L. LOIZOU, MALACHTOS, JJ.]

KYRIACOS
CONSTANTINOU

KYRIACOS CONSTANTINOU,

Appellant,

v.

v.

THE REPUBLIC

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 3622).

Military Offences—Sentence—Six months' imprisonment for desertion contrary to section 29(1)(a) of the Military Criminal Code and Procedure Law, 1964 (Law 40 of 1964)—Cannot, as a rule, be regarded as wrong in principle—Seriousness of offence particularly so during the current emergency—Reservist on 48 hours' leave of absence overstaying his leave—Trial Court assuming erroneously, without this being warranted by the material before it, that appellant applied for, and obtained the said leave with an already formed intention to use it as an opportunity for deserting—Sentence reduced. 5 10

This was an appeal against a sentence of six months' imprisonment for desertion contrary to section 29(1)(a) of the Military Criminal Code and Procedure Law, 1964. 15

The trial Court assumed erroneously, without this being warranted by the material before it, that the appellant applied for, and obtained, 48 hours' leave with an already formed intention to use it as an opportunity for deserting. The Court of Appeal reduced the sentence to one of four and a half months' imprisonment on this ground even though a sentence of six months' for desertion could not, as a rule, be regarded as being wrong in principle in view of the seriousness of the offence particularly during the current emergency. 20 25

Appeal allowed.

Appeal against sentence.

Appeal against sentence by Kyriacos Constantinou who was convicted on the 27th March, 1975, at the Military

Court sitting at Nicosia (Case No. 246/74) on one count of the offence of desertion contrary to section 29(1)(a) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to six months' imprisonment.

1976
July 1
—

KYRIACOS
CONSTANTINOU

v.

THE REPUBLIC

E. Efsthionu, for the appellant.

Gl. Michaelides, for the respondent.

The judgment of the Court was delivered by :-

10 TRIANTAFYLLIDES, P. : This is an appeal against the sentence of six months' imprisonment which was imposed on the appellant by the Military Court for the offence of desertion, contrary to section 29(1)(a) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64).

15 The appellant, who was serving as a reservist, was given on October 7, 1974, 48 hours' leave of absence, but having gone to his village he overstayed his leave and did not return to his unit until he was arrested as a deserter on November 14, 1974.

20 We are unanimously of the view that the offence of desertion is a very serious one under any circumstances and, particularly so, during the current emergency in our country; we cannot, therefore, as a rule, regard a sentence of six months' imprisonment for desertion as being wrong in principle.

25 What has, indeed, given us quite some difficulty in the present case is the fact that the trial court assumed erroneously, without this being warranted by the material before it, that the appellant applied for, and obtained, the 48 hours' leave with an already formed intention to
30 use it as an opportunity for deserting; on the contrary, the appellant has stated in mitigation of sentence, and was not contradicted by anything which was placed before the trial court, or before us, that he decided to overstay his leave only after he had got home and found
35 himself in the midst of serious difficult family problems.

In the light of the foregoing two of us felt that the *sub judice* sentence has to be reduced, but the other member of this court was of the view that, notwithstanding the above error, the sentence of six months' imprisonment
40 would still be a proper sentence in this case: eventually,

1975
July 1

—
KYRIACOS
CONSTANTINOU

v.

THE REPUBLIC

the member of the court concerned decided not to go to the length of delivering a dissenting judgment, and, so, we are in a position to unanimously reduce the sentence, in this case, to one of four and a half months' imprisonment, as from the day when he was convicted. 5

Appeal allowed.