

1976  
May 31

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

ARISTOS  
ANDREOU  
ARISTIDES

ARISTOS ANDREOU ARISTIDES,

*Appellant,*

v.

v.  
THE REPUBLIC

THE REPUBLIC,

*Respondent.*

(*Criminal Appeal No. 3723*).

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*Military Offences—Sentence—Conduct incompatible with military discipline—Section 101 of the Military Criminal Code and Procedure Law, 1964 (Law 40 of 1964)—Eight months' imprisonment—Mitigating factors—Appellant's young age, his clean criminal record and circumstances of offence—Interests of military discipline can be sufficiently served with a shorter sentence of imprisonment—Sentence reduced.* 5

The appellant, a corporal serving in the National Guard, gave without instructions from his superiors, an order to a soldier serving under him to open fire while the appellant and such soldier were on duty at a military outpost along the cease-fire line running through Nicosia town. At the material time there were in force strict orders of the appellant's superiors that there should be no firing at all from any outpost except on instructions from higher authority, or in case an outpost had come under actual attack and there were being endangered the lives of the soldiers manning it; and this was not so in the present case. There appeared, however, to be some truth in appellant's allegation that he was under the impression that his outpost was being fired at. 10 15 20

Upon appeal against the sentence of eight months' imprisonment imposed for conduct incompatible with military discipline:

*Held*, though a sentence of imprisonment was appropriate in the present case taking into account the fact that the appellant is a very young person who, having been born in 1957, enlisted in the National Guard as a volunteer in April 1974, and that he is a first offender, as well as that, to a certain extent he may have been misled by an unfortunate combination of circumstances into acting precipitously in contravention of the orders 25

of his superiors, we think that the interests of military discipline can be sufficiently served on the present occasion with a shorter sentence of imprisonment. Sentence reduced to five months' imprisonment.

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*Appeal allowed.*

**Appeal against sentence.**

Appeal against sentence by Aristos Andreou Aristides who was convicted on the 7th April, 1976 at the Military Court, sitting at Nicosia, (Case No. 328/75) on one count of the offence of conduct incompatible with military discipline, contrary to section 101 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to eight months' imprisonment.

10 *A. Koukounis*, for the appellant.

15 *St. Tamassios*, for the respondent.

The judgment of the Court was delivered by:-

TRIANAFYLLIDES, P.: The appellant complains against the sentence of eight months' imprisonment which was passed upon him by a Military Court in Nicosia in respect of conduct incompatible with military discipline, contrary to section 101 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64).

His conduct in question consisted of giving, without instructions from his superiors, an order to a soldier, who was serving under him, to open fire, while the appellant and such soldier were on duty at a military outpost along the cease-fire line running through Nicosia town; at the time the appellant was a corporal serving in the National Guard.

The appellant appeared before the trial Court without the benefit of the services of counsel and, consequently, such Court did not have before it as complete a picture as we have today.

It appears that, at the material time, there were in force strict orders of the appellant's superiors that there should be no firing at all from any outpost except on instructions from higher authority, or in case an outpost had come under actual attack and there were being endangered the lives of the soldiers manning it; and this was not so in the present case.

But there does seem to be some truth in an allegation which was put forward by the appellant before the Military Court,

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namely that he was under the impression that his outpost was being fired at; and, actually, this allegation was not rejected by the trial Court; moreover, as we have been informed very fairly, indeed, by counsel for the respondent, earlier on that same night there had been some firing along the cease-fire line involving some other outposts, and this may have made the appellant misjudge the situation in the vicinity of his own outpost when he gave to one of his subordinates the order to open fire. 5

It is obvious that the orders of the superiors of the appellant, which were not duly complied with by him on that night, were intended to avoid any provocation along the cease-fire line and, therefore, it was most important that they should have been followed very strictly and that any rush action should have been scrupulously avoided. 10  
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We do agree with the trial Court that a sentence of imprisonment was appropriate in the present case; but, on the other hand, taking into account the fact that the appellant is a very young person who, having been born in 1957, enlisted in the National Guard as a volunteer in April 1974, and that he is a first offender, as well as that, to a certain extent, he may have been misled by an unfortunate combination of circumstances into acting precipitously in contravention of the orders of his superiors, we think that the interests of military discipline can be sufficiently served on the present occasion with a shorter sentence of imprisonment, and we, therefore, reduce the sentence passed upon the appellant to five months' imprisonment. 20  
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This appeal is allowed accordingly.

*Appeal allowed.*