1976
May 3

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ANDREAS CONSTANTINOU
v.
THE REPUBLIC

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

ANDREAS CONSTANTINOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3691).

Criminal law—Sentence—Arson—Three years' imprisonment—Mitigating factors—Appellant an alcoholic—Not necessary for trial Court to state, in pronouncing sentence, that appellant should receive treatment for his condition while in prison—And not wrong in principle to send an alcoholic person to prison for a considerable period of time, pertaining to the severity of the crime he has committed—Sentence neither manifestly excessive nor wrong in principle—Appeal dismissed.

Sentence—Mitigating factors—Alcoholism.

Alcoholism—Whether a mitigating factor in passing sentence.

Sentence—Manner of pronouncement.

The appellant was sentenced to three years' imprisonment for the offence of arson.

Upon appeal against sentence counsel appearing for him contended that the trial Court ought to have coupled the sentence with a direction that the appellant, who was an alcoholic, should receive, while in prison, treatment necessitated by his condition as an alcoholic; and that the sentence of imprisonment should not have been for a period longer than is necessary in order to enable the appellant—a married man fifty-eight years old—to come out of prison as soon as he has been cured of his alcoholic habit. In this respect counsel referred to Thomas on Principles of Sentencing, p. 189*.

Held, dismissing to appeal (1) it was not at all necessary for the trial Court to state the obvious, namely that the authorities should make available to the appellant all possibly required

* See the relevant passage at p. 100 *post.*

medical, or other, treatment. We do not think that this is a reason for which we could treat the sentence of imprisonment of the appellant as having been pronounced in an erroneous manner.

(2) From the cases cited by Thomas it does not appear at all that it is wrong in principle to send an alcoholic person to prison for a considerable period of time, pertaining to the severity of the crime which he has committed. (See the cases of *Hughes, Wark* and *O'Halloran* cited by *Thomas, supra* at p. 189).

(3) In the present case the sentence is one of three years only, and, taking into account all relevant considerations, including the personal circumstances of the appellant and nature of his crime, we are not prepared to treat it as being manifestly excessive or wrong in principle, even though it may, indeed, be described as a rather severe sentence.

Appeal dismissed.

Cases referred to:

Hughes, Wark, O' Halloran (cited by Thomas on Principles of Sentencing at p. 189).

Appeal against sentence.

Appeal against sentence by Andreas Constantinou who was convicted on the 9th February, 1976 at the Assize Court of Larnaca (Criminal Case No. 462/76) on one count of the offence of arson, constrary to section 315(a) of the Criminal Code, Cap. 154 and was sentenced by Pikis, Ag. P.D.C., Artemis and Constantinides, D.JJ. to three years' imprisonment.

E. Efstathiou, for the appellant.

Gl. Michaelides, for the respondent.

The judgment of the Court was delivered by:–

TRIANTAFYLLIDES, P.: The appellant was sentenced by an Assize Court in Larnaca to three years' imprisonment on February 9, 1976, for the offence of arson, contrary to section 315(a) of the Criminal Code, Cap. 154.

The facts of this case, as they appear from the judgment of the trial Court, are, briefly, as follows: In the early hours of January 4, 1976, at about 4.30 a.m., the appellant, equipped with a piece of cloth drenched in petrol, went outside the house of the complainant, who was a neighbour of his, and, having placed the cloth under the wooden front door of the complainant's house, he set it on fire; as a result, the fire spread to the door.

In the house, apart from the complainant, there were at the time his wife and his three children. The members of the household were awakened by the smoke that filled their home and they managed to put out the fire.

In view of the nature of the crime which the appellant has committed his counsel has not contended before us that the sentence imposed on him is, as such, manifestly excessive; he has, however, raised the following two points in relation to such sentence:-

First, that the trial Court ought to have coupled the sentence with a direction that the appellant should receive, while in prison, treatment necessitated by his condition as an alcoholic. That he is an alcoholic seems to emerge sufficiently both from his past record and from a social investigation report which was produced before the trial Court; but, we do not think that this is a reason for which we could treat the sentence of imprisonment of the appellant as having been pronounced in an erroneous manner; it was not at all necessary for the trial Court to state the obvious, namely that the authorities should make available to the appellant all possibly required medical, or other, treatment.

Secondly, that the sentence of imprisonment should not have been for a period longer that is necessary in order to enable the appellant—who is a married man, fifty-eight years old—to come out of prison as soon as he has been cured of his alcoholic habit; and we have been referred to, in this respect, to Thomas on Principles of Sentencing, p. 189, where it is stated that "the Court generally shows far more sympathy to the alcoholic than it does to an offender acting under the influence of drink which he had taken deliberately" and that in relation to an alcoholic "the Court is usually willing to consider rehabilitation as its major object".

From, however, the cases cited by the learned author it does not appear at all that it is wrong in principle to send an alcoholic person to prison for a considerable period of time, pertaining to the severity of the crime which he has committed. The instances in which an appellate Court has interfered with sentences passed on alcoholics show that the reduction was not of such a nature as to render the sentence in the present case a sentence which has to be regarded as being inappropriate for the appellant. There is referred to by Thomas, *supra*, for example, the

case of *Hughes* in which a man of fifty–two, a chronic alcoholic, was sent to prison for four years for theft and his sentence was reduced to two years' imprisonment, so that he would have "a chance in the foreseeable future, the not too remote future, of coming back to civil life and testing out .... whether he has, by reason of the treatment in prison, been broken of the habits which constantly get him into trouble"; also, in the case of *Wark* a sentence of four years' imprisonment, imposed on an alcoholic for obtaining a cheque for £5,000 by false pretences was reduced to one of three years; lastly, in the case of *O'Halloran* a sentence of four years' imprisonment for shopbreaking, imposed on an alcoholic, was reduced to two and a half years, and the appellate Court said: "this man's trouble .... is that he is a habitual drunkard ... it is because of his declared desire to give up drinking that we are giving him a chance."

In the present case the sentence is one of three years only, and, taking into account all relevant considerations, including the personal circumstances of the appellant and the nature of his crime, we are not prepared to treat it as being manifestly excessive or wrong in principle, even though it may, indeed, be described as a rather severe sentence; therefore, this appeal is dismissed accordingly.

Appeal dismissed.