

1979 May 30

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

APOSTOLOS CHRISTOU APOSTOLOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4007*).

Military offences—Sentence—Desertion contrary to section 29(1) of the Military Criminal Code and Procedure Law, 1964—Nine months’ imprisonment—Mitigating factors—Appellant a good citizen, the sole supporter of his family and has shown good conduct while serving in the National Guard—Circumstances of offence— Sentence manifestly excessive—Reduced. 5

This was an appeal against a sentence of nine months’ imprisonment for the offence of desertion contrary to section 29(1) of the Military Criminal Code and Procedure Law, 1964. The offence was committed when the appellant overstayed leave which had been regularly granted to him for serious personal reasons; and he was punished in this respect with about forty days’ detention at the cells of the military police. He was a good citizen and the whole supporter of his family. 10

The Court of Appeal not losing sight of the fact that the appellant had a previous conviction for desertion, which was not at all serious, and not allowing it to weigh unduly against the appellant and taking, also, into account that the appellant has shown good conduct while serving in the National Guard: 15

Held, that the sentence of nine months’ imprisonment is, notwithstanding the serious nature of the offence of desertion, manifestly excessive in the circumstances of the present case and it will be reduced to four months’ imprisonment. 20

Appeal allowed.

Cases referred to: 25

Yiannakou v. The Republic (1972) 2 C.L.R. 47.

Appeal against sentence.

Appeal against sentence by Apostolos Christou Apostolou who was convicted on the 2nd March, 1979 by a Military Court sitting at Nicosia (Case No: 54/79) on one count of the offence of desertion contrary to section 29(1) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to nine months' imprisonment.

S. *Yiordamlis*, for the appellant.

S. *Tamassios*, for the respondents.

10 TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant has been sentenced to nine months' imprisonment, as from March 2, 1979, for the offence of desertion contrary to section 29(1) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64).

15 He has appealed against the sentence imposed on him on the ground that it is manifestly excessive.

The personal circumstances of the appellant appear from a social investigation report which was prepared for the purposes of this appeal and which was not before the Military Court when it sentenced the appellant. He seems to be a good citizen and he is the sole supporter of his family (see, in this respect, *Yiannakou v. The Republic*, (1972) 2 C.L.R. 47).

25 We have not lost sight of the fact that the appellant has a previous conviction for desertion in respect of which he was sentenced to one month's imprisonment. It was apparently a not at all serious instance of desertion and it should not be allowed to weigh unduly against the appellant.

30 On the present occasion the appellant did not actually desert from his unit but he merely overstayed leave which had been regularly granted to him for serious personal reasons; and the appellant was, also, punished in this respect by having been detained at the cells of the military police for about forty days.

35 Counsel appearing for the respondent has very fairly agreed that the sentence imposed on the appellant should be reduced in view of the contents of the aforesaid social investigation report.

Taking, also, into account that the commanding officer of

the appellant has given him a certificate that he has shown good conduct while serving in the National Guard, we are of the opinion that the sentence of nine months' imprisonment which was passed upon him is, notwithstanding the serious nature of the offence of desertion, manifestly excessive in the circumstances of the present case and we have decided to reduce it to four months' imprisonment.

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Appeal allowed.