1982 July 29

[A. LOIZOU, SAVVIDES AND STYLIANIDES, JJ.]

AGATHANGELOS KYRIACOU NICOLAOU
AND ANOTHER

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals Nos.* 4334, 4336).

Criminal Law—Sentence—Malicious damage to property—Four months' imprisonment—Not manifestly excessive in the circumstances of this case notwithstanding the young age of the appellants, admission of their guilt, their repentance, the restoration of the damage and the consequences of a sentence of imprisonment.

Criminal Law—Sentence—Young offenders—Need for a Social Investigation report especially when Courts are minded to impose a sentence of imprisonment.

The appellants were sentenced to four months' imprisonment after pleading guilty to the offence of causing malicious damage to property. The offence in question was committed whilst the appellants were serving in the national guard and the damage was caused on the saloon car of one of the Officers of their Unit. Both appellants were punished disciplinarily, by the Military Authorities with twenty days' imprisonment and the second appellant had a previous conviction for causing bodily harm for which he was bound over. They seriously repented and paid the damage which amounted to £121. At the request of Counsel for the second appellant a social investigation report has been prepared and made available to the Court of Appeal.

Upon appeal against sentence:

Held, that after considering the circumstances of the case as well as the personal circumstances of the two appellants and

what has been said on their behalf by their counsel, which included emphasis on their age, the admission of their guilt, their repentance, the consequences that a sentence of imprisonment will entail upon them and the restoration of the damage to the complainant, this Court has come to the conclusion that the sentence imposed upon them is not in any way manifestly excessive; accordingly the appeals should fail.

Appeals dismissed.

Observations with regard to the desirability of Courts having social investigation reports before sentence, especially when the accused persons are young and the Courts are minded to impose imprisonment.

Cases referred to:

Pikatsas v. The Police (1963) 2 C.L.R. 45;

Leandrou v. The Republic (1966) 2 C.L.R. 5;

Leandrou v. The Police (1971) 2 C.L.R. 3;

Ioannou v. The Police (1970) 2 C.L.R. 36.

Appeals against sentence.

Appeals against sentence by Agathangelos Kyriacou Nicolaou and Another who were convicted on the 29th June, 1982 by the Military Court sitting at Limassol (Case No. 201/82) on one count of the offence of causing malicious damage to property contrary to section 324(1) of the Criminal Code, Cap. 154 and section 5 of the Military Criminal Code and Procedure Law, 1964 (Laws 1964-1979) and were both sentenced to four months' imprisonment.

G. Korfiotis with *Chr. Triantafyllides* for the appellants.

St. Tamasios for the respondent.

A. Loizou J. gave the following judgment of the Court. The appellants were found guilty on their own plea of the offence of causing malicious damage to property contrary to section 324 (1) of the Criminal Code, Cap. 154, and were both sentenced to four months' imprisonment.

They appeal against this sentence on the ground that same is (a) manifestly excessive, taking into consideration the circumstances of the case and the principles of Law pertaining to such issue, and (b) that the sentence was imposed by the Military

Court without having before it a social investigation report on them.

The first appellant was born in Peristeronopiyi village Famagusta, and graduated the second class of the Gymnasium. He was working as a sailor until he joined the National Guard for the purposes of his national service on the 15th July 1980.

The second appellant was born in Famagusta on the 23rd November 1960. He graduated a technical school and joined the National Guard on the 15th July 1980.

In January 1982, they were both serving at the naval base Ziyi. On the 9th January the wife of the complainant, who is an officer serving at the same base, drove their private saloon car under registration number M.B.928, a Ford Cortina and parked it at about 10:00 p.m. outside their house, half on the road and half on the pavement. On the following morning it was noticed that damage had been caused through scratches on the side, the roof and the boot of the car. The matter was reported to the Police and their investigations led them to the second appellant, who upon interrogation admitted the offence and explained the circumstances under which the offence was committed. He said that at 2:30 a.m. on the 10th January 1982, together with the first appellant went with their motorbicycles near the house of the complainant in Leandros street, Limassol and with pieces of iron which they took from a nearby building approached on foot the car, they caused the damage by scratching the paint on its side, the roof and the boot, and after cutting off one of the wind-screen wipers and bending the other one, they returned on foot to where they had left their motor-cycles and drove away.

The motive given by them for committing this offence was that the complainant was persistingly and unfairly reprimanding them during their service. They were both punished disciplinarily with twenty days' imprisonment and the second appellant has a previous conviction for causing bodily harm on the 13th October 1980 for which he was bound over in the sum of one-hundred pounds for three years to come up for judgment, if and when called upon for that purpose, which he admitted. Their then defending counsel before the Military Court, conceded in the course of his plea in mitigation that the act of the

appellants was of a vindictive nature but that it was a frivolous and spontaneous act connected with their young age. They seriously repented and paid the damage which amounted to £121.-. He further invited the Court to take into consideration the personal circumstances of the two appellants and bear also in mind that they were both due for discharge on completion of their national service in September 1982.

In passing sentence the Military Court said that it took into consideration their young age, their family background and that they were both punished disciplinarily, as already mentioned. They also took into consideration that the two appellants realized the seriousness of their action, repented and pleaded for leniency and that they had compensated the complainant for the damage to his car.

At the request of counsel for the second appellant a social investigation report has been in the meantime prepared and made available to us. It is true that time and again the desirability of Courts having social investigation reports before sentence, especially when the accused persons are young and the Courts are minded to impose imprisonment, has been stressed in a number of cases as being very valuable in connection with sentencing. (See *Pikatsas v. The Police* (1963) 2 C.L.R. p. 45; *Leandrou v. The Republic* (1966) 2 C.L.R. p. 5; *Leandrou v. The Police* (1971) 2 C.L.R. p. 3; *Ioannou v. The Police* (1970) 2 C.L.R. p. 36).

The omission, however, to have such a report does not by itself necessarily affect the correctness of the sentence imposed, especially where it is clear that all relevant circumstances were in effect placed before the Court.

In the present case the contents of the Social Investigation Report, prepared on the second appellant, were in effect, but admittedly with less detail before the Military Court.

We have considered the circumstances of the case as well as personal circumstances of the two appellants and what has been said on their behalf by their counsel, which included emphasis on their age, the admission of their guilt, their repentance, the consequences that a sentence of imprisonment will entail upon them and the restoration of the damage to the

complainant, and we have come to the conclusion that the sentence imposed upon them is not in any way manifestly excessive.

We have not lost sight of the fact that this was a planned vindictive action and that the two appellants put themselves into considerable trouble in effecting, which could not really be dealt with lightly by the Military Court, as it was in effect connected with military discipline.

For all the above reasons the appeals of the two appellants which have been heard together are dismissed.

Appeals dismissed.