

1982 January 12

[TRIANTAFYLIDES, P., HADJIANASTASSIOU, DEMETRIADES, JJ.]

ELIAS YIANNAKI CHRISTOU,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4283*).

Military offences—Sentence—Desertion in the interior—Six months' imprisonment—No weight given to question of suspension of appellant's military service by medical board—Sentence wrong—Reduced to two months.

5 The appellant was on November 24, 1981, sentenced to six
months' imprisonment after pleading guilty to the offence of
desertion in the interior, contrary to sections 29 and 31 of the
Military Criminal Code and Procedure Law, 1964. He had,
as from 24th September, 1981, been granted suspension of his
10 military service for a period of six months for the purpose of
undergoing treatment for a fracture of his right collar-bone
which had healed in an malformed manner.

Upon appeal against sentence:

15 *Held*, that though this was a proper case in which to pass
a sentence of imprisonment such sentence had to be limited
for such a duration as would enable appellant, after being dis-
charged from prison, to take, for a sufficiently long time advan-
tage of the remainder of the period of the suspension of his
military service in order to receive medical treatment for the
20 malformation of his right collar-bone; and that, therefore,
the sentence of six months' imprisonment is wrong and it should
be reduced to a sentence of two months.

Appeal allowed.

Appeal against sentence.

25 Appeal against sentence by Elias Yiannaki Christou who

was convicted on the 24th November, 1981 by a Military Court sitting at Limassol (Case No. 269/81) on one count of the offence of desertion in the interior contrary to sections 29 and 31 of the Military Criminal Code and Procedure Law, 1964 and was sentenced to six months' imprisonment. 5

Appellant appeared in person.

St. Tamassios, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant was sentenced by the Military Court of Limassol to six months' imprisonment on 24th November 1981 after having pleaded guilty to the offence of desertion in the interior, contrary to sections 29 and 31 of the Military Criminal Code and Procedure Law, 1964. 10

The appellant, who has appealed against the above sentence, was absent from his unit, in the National Guard, from 29th May 1981 to 12th June 1981. 15

In passing sentence the Military Court took into account another case of desertion by the appellant; on that occasion he was absent from his unit without leave from 23rd August 1981 to 4th September 1981. 20

We have often stressed that desertion, in view of its nature, is a very serious offence which undermines military discipline. On the other hand, we have, also, stressed, on many occasions, that in assessing sentence each case must be considered on its own merits, in the light, *inter alia*, both of the circumstances in which the particular offence has been committed and of the personal circumstances of the offender. 25

In this case when the sentence in question was passed upon the appellant the Military Court had before it a certificate which was issued to the appellant by the appropriate medical board and by means of which he had been granted, as from 24th September 1981, suspension of his military service for a period of six months for the purpose of undergoing treatment for a fracture of his right collar-bone which had healed in an malformed manner. 30 35

We do think that, as the appellant was due to resume his military service on 30th March 1982, at the expiration of the

5 period of its suspension, this was, indeed, a proper case in which,
on the one hand, to pass a sentence of imprisonment upon the
appellant so as to teach him the lesson that desertion cannot
be tolerated, and, on the other hand, to limit such sentence
to such a duration as would enable him, after being discharged
10 from prison, to take, for a sufficiently long time, advantage
of the remainder of the period of the suspension of his military
service in order to receive medical treatment for the afore-
mentioned malformation of his right collar-bone.

We, therefore, have decided that, in the circumstances of
15 this case, the sentence of imprisonment of six months which
was passed upon the appellant is wrong and it should be reduced
to a sentence of imprisonment of two months as from the date
when he has been sent to prison, so that after he has been dis-
charged from there he will have available time at his disposal,
while his military service is still suspended, to be treated for
20 his aforesaid affliction.

This appeal is, therefore, allowed accordingly.

*Appeal allowed. Sentence reduced
to two months.*