

1982 April 12

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

MICHALAKIS ANGELODEMOU,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4299).

*Criminal Law—Sentence—Obtaining money by false pretences—
 Nine months' imprisonment—Appellant's bad criminal record
 with a similar previous conviction and six previous convic-
 tions for stealing—Has failed to take advantage of lenient treat-
 ment afforded to him in the past—Appellant with characteristics
 of recidivism has to face consequences of his acts and society
 has to be protected—Though price for his conduct paid by his
 wife and children no room for leniency—Appeal dismissed.*

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The appellant pleaded guilty to the offence of obtaining money
 by false pretences and was sentenced to nine months' imprison-
 ment. The offence in question was committed when the appel-
 lant presented himself as an employee of a firm of importers
 of motor-cycles and received £40.— as down payment from the
 complainant, a man of 70 years age, in order to secure a motor-
 cycle for him. The appellant was 27 years of age, married with
 two children and he had a similar previous conviction and 6
 previous convictions for stealing for which he received sentences
 of fine, probation and imprisonment and suspended sentence
 of imprisonment.

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Upon appeal against sentence:

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Held, that though the persons that primarily pay the price
 for the appellant's antisocial conduct are his wife and children
 there are times when the limits of leniency are exhausted; that
 the gravity of the offence, including the circumstances surround-

ing its commission, particularly the fact that a man of his age took advantage of the trust placed in him by an old poor labourer and the circumstances of the appellant, including his past record, leave no room for leniency; that though the sentences which were imposed on the appellant by the Courts in the past were indicative of their desire to give him a further chance they have failed in their aim and the appellant with these characteristics of recidivism has to face the consequences of his acts and society has to be protected from his mischiefs; accordingly the appeal should be dismissed.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Michalakis Angelodemou who was convicted on the 16th February, 1982 at the District Court of Nicosia (Criminal Case No. 11515/81) on one count of the offence of obtaining money by false pretences, contrary to section 298 of the Criminal Code, Cap. 154 and was sentenced by S. Nicolaides D.J. to nine months' imprisonment.

Appellant appeared in person.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal against a sentence of nine months imprisonment for obtaining money by false pretences contrary to section 298 of the Criminal Code. The appeal was filed by the appellant in person and the ground relied upon is that the sentence is excessive.

The appellant a labourer, employed at the Government Grain Stores in Nicosia, is 27 years of age, married with two children, one aged five and the other two. During the second half of January 1981 he met the complainant, an attendant at the public conveniences of the Municipality of Nicosia, a man of 70 years of age, who expressed the wish to buy a motor-cycle. The appellant presented himself as being employed by the firm of Pierides, importers of such motor-cycles, that he could secure for him one at the price of a hundred pounds and persuaded the complainant to give him £40.- as down-payment. A week

passed and when they met again the appellant told the complainant that he had in fact obtained the motor-cycle, but that it was at Ayios Dhometios and that he would deliver same to him later. After the appellant made several excuses for the nondelivery of the motor-cycle the complainant on the 12th March 1981, reported the matter to the Police. The appellant was then arrested and admitted the offence. 5

The criminal record of the appellant started in 1975 when he was placed on probation for two years, for shopbreaking and theft contrary to sections 294(a) and 295 of the Criminal Code, when five other similar offences were taken into consideration. In 1977 he was sentenced to two months imprisonment for stealing from a dwelling house contrary to section 255 and for stealing contrary to section 266(b) of the Code. Whilst serving in the National Guard he was sentenced to six months imprisonment for desertion when a number of other offences, including obtaining money by false pretences were taken into consideration. Five months later he was once more sent to prison for two months for stealing, to be followed by further imprisonment for desertion, whilst three other offences were taken into consideration by the Military Court. Again in 1977 for stealing he was fined £5.- and bound over for three years to come up for judgment. In September 1978 again for stealing he was sentenced to six months imprisonment but the sentence was suspended for three years; five similar offences were taken into consideration, whilst for two other similar offences he was given suspended sentence of six months imprisonment once more. 10
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In May 1979 for obtaining money by false pretences, he was sentenced to nine months imprisonment but the sentence was once more suspended, and five similar offences were taken into consideration; all these sentences imposed were to run concurrently. On the 10th March 1980, for stealing by agent, contrary to sections 255 and 270(b) of the Code he was cautioned and discharged and ordered to pay £14.800 mls to the complainant in that case. 30
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The Welfare Officer's report produced at the trial refers to his family background and to his present situation within his family and at work, and describes the appellant as having full knowledge of the seriousness and consequences of his 40

antisocial behaviour and as not being always able to control himself, his tendency for such behaviour being greater when he has no steady employment and he needs money.

5 We have heard the appellant addressing us in this case, having declined legal aid, and giving us assurances about his repentance and pleading that if he was given a chance he would try his best not to come before the Court again and further praying for leniency for the sake of his family.

10 No doubt the persons that primarily pay the price for the appellant's antisocial conduct are his wife and children but there are times when the limits of leniency are exhausted. The gravity of the offence, including the circumstances surrounding its commission, particularly the fact that a man of his age took advantage of the trust placed in him by an old poor labourer
15 and the circumstances of the appellant, including his past record, leave no room for leniency. As it may reasonably be inferred from the treatment he received at times, the Court in the past must have taken him up on his assurances on several occasions and must have paid due regard to the consequences
20 that imprisonment entailed for his wife and minor children, and imposed suspended sentences which were indicative of their desire to give him a further chance. Obviously they have failed in their aim and the appellant with these characteristics of recidivism has to face the consequences of his acts and society
25 has to be protected from his mischiefs. We are of the view that the sentence imposed on the appellant is, if anything, on the lenient side. We share, however, the belief of the learned trial Judge that the appellant will benefit from the services of psychiatrists and social workers which may be rendered to him
30 whilst serving his sentence.

For all the above reasons this appeal is dismissed.

Appeal dismissed.