

1988 August 1

(DEMETRIADES, J.)

IN THE MATTER OF GEORGHIOS PATSALIDES,

AND

IN THE MATTER OF AN APPLICATION BY THE ABOVE APPLICANT
FOR AN ORDER OF HABEAS CORPUS AT SUBJICIENDUM.

(Application No. 108/88).

5 *Sentence — Imprisonment — Remission of, for good conduct and industry — The Prisons (General) Regulations, 1981, as amended by Regulations published on 13.3.87 — Conviction and sentence imposed after 13.3.87, but term that the sentence would run from a date prior to 13.3.87 — In the light of Reg. 5 of the amending Regulations, the new Regulations are applicable.*

On 7.5.87 the applicant was convicted for robbery and abduction and was sentenced to two years' imprisonment, to run as from the day when he had been remanded to custody, i.e. as from 21.2.87.

10 The question in this case is whether the remission of applicant's sentence for good conduct and industry is governed by the Regulations in force as on the 21.2.87 or the Regulations in force on 7.5.87.

15 Held, *dismissing the application*, that in the light of the wording of Regulation 5 of the amending Regulations, the case of the applicant is regulated by the new Regulations, because he was convicted and sentenced after they came into force.

*Application dismissed
No order as to costs.*

20 **Application.**

Application for an order of habeas corpus by Georghios Patsalides who was convicted on his own plea and sentenced to imprisonment on the ground that his detention at the Central Prisons in Nicosia is unlawful.

25 *E. Chimonas*, for the applicant.

P. Clerides, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant, who was convicted by the Nicosia Assizes on the 7th May, 1987, on his own plea and sentenced to imprisonment, seeks an order for habeas corpus at subjiciendum on the ground that his detention at the Central Prisons in Nicosia is unlawful.

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The facts that led to the present proceedings are: On the 7th May, 1987, the applicant was convicted by the Assizes of Nicosia on his own plea for robbery and abduction and was sentenced to imprisonment on three counts. The total of the sentences imposed on him was two years. As the applicant was remanded in custody for the offences he pleaded guilty to on the 21st February, 1987, the Assize Court ordered that his imprisonment was to run as from that date and not from the day of his conviction. In addition to the sentence imposed by it the Assize Court decided to order the activation of a suspended sentence of six months' imprisonment imposed by another Court on the applicant which was to start running after the applicant served his sentence of two years.

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It is the complaint of the applicant that the Director of Prisons ought to have calculated the remission of his sentence for good conduct and industry in accordance with the provisions and the Regulations in force as at the 21st February, 1987, that is the date when the Assize Court ordered that his imprisonment started to run and not from the date he was convicted and sentenced, i.e. the 7th May, 1987.

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Remission of sentences imposed by the Courts of the Republic for good conduct and industry are regulated by Regulations 91 - 99 of the Prisons (General) Regulations of 1981 (see Supplement No. 3 of the Official Gazette of the Republic No. 16/60 of the 30th January, 1981, Notification No. 18). These regulations were amended by Notification 76 of 1987 which was published in the 3rd Supplement of the Official Gazette of the Republic No. 2214 on the 13th March, 1987.

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It is common ground that when a person is sentenced to serve a term of imprisonment after the termination of another sentence the total of the two sentences is calculated as one (see Regulation 96(a) and that the sentence of imprisonment which the applicant had to serve was a total of two years and six months.

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It is the submission of counsel for the applicant that in view of the order of the Assize Court that the sentence of his client of two years' imprisonment had to start running as from the 21st February, 1987, the Regulations of 1981 and not the amending Regulations of 1983 apply and, therefore, his client ought to have been released from prison on the 21st June, 1988 and not on the 29th September, 1988, as the Director of Prisons had decided.

Counsel for the respondents submitted, however, that the amended Regulation does not apply in the case of the applicant, in view of the provisions of Regulation 5 of the amending Regulations of 1983 which reads:

«Αι διατάξεις των παρόντων Κανονισμών δεν εφαρμόζονται επί κρατούμενων καταδικασθέντων προ της ενάρξεως της ισχύος των παρόντων Κανονισμών.»

(«5. The provisions of the present Regulations do not apply in the case of detained persons convicted prior to the coming into force of the present Regulations.»)

Considering the wording of this Regulation I have come to the conclusion that the intention of the legislature was to exclude persons found guilty and whose sentence started to run prior to the coming into force of this Regulation, that is persons who were already serving their sentence when the Regulation came into force, from the benefits given by this Regulation and that the new Regulations apply in the case of the applicant because he was convicted and sentenced after the coming into force of this Regulation.

Therefore, the Director of Prisons was correct in interpreting this Regulation and for this reason the application of the applicant is dismissed but, in the circumstances, I make no order as to costs.

*Application dismissed
with no order as to costs.*