[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES JJ.]

MIKIS FRIXOU *alias* PARASCHOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2648)

Criminal Procedure—Sentence—Giving reasons for—The Criminal Procedure Law, Cap. 155, *section* 113 (1)*—Failure to give reasons—Effect of—Re-trial not always necessary.*

The appellant was convicted of the offences of assault causing bodily harm contrary to section 243 of the Criminal Code, Cap. 154, and of disturbance contrary to section 95 of the Criminal Code. He was sentenced to nine months' and two months' imprisonment on each count respectively, to run concurrently. It was argued on appeal on behalf of the appellant that these sentences should be set aside on the ground, *inter alia*, that the trial Court did not give reasons for the sentences imposed.

Held : (1) In *Michael Lazarou Sava* v. *The Police* (1949) 18 C.L.R. 192 the trial Judge completely failed to give his reasons for finding the accused guilty on a first count and not guilty on a second count. He had failed to comply with section 110 (1) of the Criminal Procedure Law, 1948 (now section 113 (1) of Cap. 155, Laws of Cyprus 1959). At p. 193 Jackson C. J. said " In general, a judge's omission to comply with that section could be cured by returning the case to the trial Court, under section 143 (*a*) of the new law for further information. But here again it appears to us that the question whether or not it would be expedient to do so must depend upon the circumstances of each case ", and at p. 194 he said he was unwilling to make any statement which might seem to lay down that in every case of failure to comply with section 110 the case must be referred back in order to secure compliance with it. " Compliance with that section can be secured by other means, and these means we propose to take ". The Court declined to allow the appeal or to send the case back for further information. It held upon the record of the case it was able to decide the appeal without additional information.

(2) The precedent is particularly in point here. In the present case it is obvious from the material in the file that the sentence imposed was fully justified. The facts relating to the commission of the offence after the plea of guilty were stated to the Court. For the accused, who was represented by counsel, statements

were made to the trial Judge and it is quite obvious from the penalty which was imposed in this case that he did not give effect to the latter, nor arguments made on the accused's behalf.

(3) This is a case in which it is quite apparent from the statements of counsel that the accused was one of a group of people who committed acts of a violent nature which terrorize the population and which are thoroughly to be discouraged. If the sentence had been considerably heavier in this case I do not think any criticism would have been offered of it. The offence was a serious one and the facts justify the laying of the charges and the penalties imposed.

Appeal dismissed.

Cases referred to :

Michael Lazarou Sava v. *The Police* (1949) 18 C.L.R. 192 at p. 193, *followed.*

Appeal against sentence.

The appellant was convicted on the 7th July, 1963, at the District Court of Nicosia (Cr. Case No. 6430/63) on 2 counts of the offences of: 1. Assault causing actual bodily harm, contrary to ss. 243 and 20 of the Criminal Code, Cap. 154 and 2. Disturbance contrary to ss. 95 and 20 of the Criminal Code Cap. 154 and was sentenced by Pierides D.J. to 9 months' imprisonment on count 1, and 2 months' imprisonment on count 2 the sentences to run concurrently.

L. Clerides for the appellant.

S. Georghiades for the respondents.

The facts sufficiently appear in the judgment of the Court delivered by :

WILSON, P. : This is an appeal by the accused Mikis Frixou *alias* Paraschos of Nicosia from the sentence imposed upon him by the District Court of Nicosia on May 7th, 1963, after he had pleaded guilty to two counts : 1. Assault causing actual bodily harm, contrary to sections 243 and 20 of the Criminal Code, Cap. 154 ; and 2. Disturbance, contrary to ss. 95 and 20 of the Criminal Code, Cap. 154.

On count 1 he was sentenced to 9 months' imprisonment ; on count 2 he was sentenced to 2 months' imprisonment, both sentences to run concurrently.

Two main grounds of appeal were argued before us : 1. The trial Court did not give reasons for the sentences imposed ; and 2. In any event the previous convictions

—ten in number—were not such as to justify the sentence imposed in this case, taking into account punishments which were imposed in respect of them.

I shall deal with the first ground, namely, the allegation that the trial Judge ought to have given reasons for judgment. It was submitted that section 113 of Cap. 155 required the Judge to give detailed reasons.

Speaking generally, we understand this practice is usually observed by the trial Judge although the reasons for judgment are not always recorded and contained in the material filed upon an appeal. It is desirable that he should give his reasons even if stated in terms of only one sentence. As long as his reasons are indicated that, in our view, should be sufficient provided the circumstances do not require greater elaboration or lengthy reasons. However, we are not laying this down as a rule of law ; it is a matter in which the Judges have to use judicial discretion.

In *Michael Lazarou Sava* v. *The Police* (1949) 18 C.L.R. 192 the trial Judge completely failed to give his reasons for finding the accused guilty on a first count and not guilty on a second count. He had failed to comply with section 110 (1) of the Criminal Procedure Law, 1948 (now section 113 (1) of Cap. 155, Laws of Cyprus 1959). At p. 193 Jackson, C.J., said " In general, a judge's omission to comply with that section could be cured by returning the case to the trial Court, under section 143 (*a*) of the new law for further information. But here again it appears to us that the question whether or not it would be expedient to do so must depend upon the circumstances of each case", and at p. 194 he said he was unwilling to make any statement which might seem to lay down that in every case of failure to comply with section 110 the case must be referred back in order to secure compliance with it. " Compliance with that section can be secured by other means, and these means we propose to take ". The Court declined to allow the appeal or to send the case back for further information. It held that upon the record of the case it was able to decide the appeal without additional information.

This precedent is particularly in point here. In the present case it is obvious from the material in the file that the sentence imposed was fully justified. The facts relating to the commission of the offence after the plea of guilty were stated to the Court. For the accused, who was

represented by counsel, statements were made to the trial Judge and it is quite obvious from the penalty which was imposed in this case that he did not give effect to the latter, nor arguments made on the accused's behalf.

This is a case in which it is quite apparent from the statements of counsel that the accused was one of a group of people who committed acts of a violent nature which terrorize the population and which are thoroughly to be discouraged. If the sentence had been considerably heavier in this case I do not think any criticism would have been offered of it. The offence was a serious one and the facts justify the laying of the charges and the penalties imposed.

For these reasons the appeal will be dismissed.

Mr. Clerides : May I ask Your Honours that, in view of the fact that the appeal involves a question of law, it would be desirable that the sentence should not run from to-day.

WILSON, P. : The sentence will run from to-day. There was no ground upon which this appeal was justified.

Appeal dismissed.