

ANDREAS LOUCA MICHAEL,

*Appellant,*

v.

THE POLICE,

*Respondents.*

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ANDREAS  
LOUCA  
MICHAEL  
v.  
THE POLICE

(*Criminal Appeal No. 3006*)

*Criminal Law—Sentence—Young Offender (aged 25)—Store-breaking contrary to section 294 (a) of the Criminal Code, Cap. 154—Sentence of £60 fine—Appeal against sentence on the ground that it is manifestly excessive in the circumstances of the case—Sentence set aside and a Probation Order substituted therefor.*

*Young Offenders—Social investigation report—Probation Order under section 5 (1) of the Probation of Offenders Law, Cap. 162.*

*Probation of offenders—Social investigation report—Probation Order—The Probation of Offenders Law Cap. 162, section 5 (1).*

This is an appeal against a sentence of £60 fine imposed on a young offender (aged 25) for store-breaking contrary to section 294 (a) of the Criminal Code, Cap. 154. The Court of Appeal considering the circumstances in which the offence was committed, as well as the character and other personal circumstances of the offender, and following *Pikatsas v. The Police* (1963) 1 C.L.R. 1, set aside the sentence and made, instead, a Probation Order for a period of two years under section 5 of the Probation of Offenders Law Cap. 162.

Cases referred to :

*Charalambos Tryfona alias Aloupos v. The Republic*, 1961  
C.L.R. 246 ;

*Andreas Michael Stylianou and Others v. The Republic*, 1961  
C.L.R. 265 ;

*The Attorney-General v. Georghios Stavrou and Others*, 1962  
C.L.R. 274 ;

*Pikatsas v. The Police* (1963) 1 C.L.R. 1.

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## Appeal against sentence.

Appeal against sentence by Andreas Louca Michael who was convicted on the 11th June, 1968 at the District Court of Nicosia, sitting at Morphou, (Criminal Case No. 2106/68) on one count of the offence of storebreaking, contrary to section 294 (a) of the Criminal Code Cap. 154 and was sentenced by HjiConstantinou, D.J., to pay a fine of £60.

*E. Odysseos*, for the appellant.

*S. Nicolaides*, Counsel of the Republic, for the respondents.

The following judgment was delivered by :

VASSILIADES, P. : On the material now before us, we have no doubt in our minds that this sentence cannot be sustained. Apparently, the learned trial Judge, in dealing with the sentence, did not have in mind the case of *Charalambos Tryfona alias Aloupos v. The Republic*, 1961 Cyprus Law Reports, p. 246 ; he also did not have in mind *Andreas Michael Stylianou and Others v. The Republic*, 1961 Cyprus Law Reports, p. 265. Another useful case in this connection is *The Attorney-General v. Georghios Stavrou and Others* 1962 Cyprus Law Reports, p. 274.

To enable the Court to deal further with the question of sentence, a social investigation report is, in our opinion, necessary. We do not think that such a report can be prepared in less than about three weeks' time. Therefore, we find it necessary to adjourn this case until the 18th of October, 1968, at 10 a.m., for further consideration. In the meantime, counsel for the Police will be able to obtain and file with the Registrar sufficient copies of the social investigation report for all the Judges to peruse before the hearing and also supply the other side with similar copies.

The question now arises as to what is to be done with the appellant in the meantime. He stands convicted on his own plea for store breaking, contrary to section 294 (a) of the Criminal Code Cap. 154 which carries imprisonment up to seven years. The trial Judge took the view that this was a case where a sentence of imprisonment should be avoided. On the other hand, having set aside the sentence of a heavy fine imposed by the trial Judge for the reasons which we shall state in due course, we now have to consider the question of sentence afresh. And, in doing so, we expect to find assistance in the social investigation report

for the preparation of which we have already given directions. It may, ultimately, appear that a sentence of imprisonment can be avoided in this case. It is not without difficulty, however, that we have come to the conclusion that we should allow bail, pending the adjournment.

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Counsel for the appellant assured the Court that his client shall attend the Court on the further hearing of the appeal.

Case adjourned to the 18th of October, 1968, at 10. a.m. Bail allowed £100 with surety to the satisfaction of the Registrar.

VASSILIADES, P. : As we have already said at the last hearing when we set aside the sentence of £60 fine imposed by the trial Judge, we share with him the view that a sentence of imprisonment should be avoided in this case. The circumstances in which the offence was committed, as well as the character and other personal circumstances of the offender are such as to leave no doubt in our mind that the best way of dealing with the matter before us, is to make use of the provisions of section 5 of the Probation of Offenders Law, and make a probation order placing the offender under the supervision of a Probation Officer for a period of two years.

We find it unnecessary to go into more detail regarding the facts of the case than what the learned trial Judge has taken into consideration in dealing with sentence. He said :—

- “(a) The accused was working next to the store in question as a mason.
- (b) The value of the buckets stolen therefrom is a very small one (£0.500 mils), whereas the kind of the things stolen show that the accused took them in order to use them in his work.
- (c) The offence was committed in the presence of a witness and during mid-daylight.”

The learned Judge also noted that the appellant admitted his offence as soon as he was called at the Police Station. He has apparently repented for what he has done and has made a clean breast of it on first opportunity. In the circumstances, we wish to take the same course as that adopted by the Court of Appeal in *Pikatsas v. The Police* (1963) C.L.R. Part I, page 1.

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Section 5 (1) of the Probation of Offenders Law (Cap. 162) provides that “where a Court . . . . . is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the Court may instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a Probation Officer for a period to be specified in the order of not less than one year nor more than three years.”

In the present case instead of sentencing the appellant we make a probation order requiring him to be under the supervision of the Welfare Officer in charge of Morphou area, (who is also a Probation Officer for the purposes of the law in question), for a period of two years under the general condition in the form provided in the Probation of Offenders Rules. We do not think that any special conditions need be inserted in the order. The supervising Court shall be the District Court of Nicosia (Morphou Registry).

Appeal allowed. Sentence of £60 fine substituted with a probation order as above.

*Appeal allowed. Sentence of fine set aside. Probation order in above terms substituted.*