

1969
Sept. 26

[VASSILIADES, P., TRIANTAFYLIDIS, LOIZOU, JJ.]

CHRISTODOULOS
CHARALAMBOUS
TTOOULAS
v.
THE POLICE

CHRISTODOULOS CHARALAMBOUS TTOOULAS,
Appellant,
v.
THE POLICE,
Respondents.

(*Criminal Appeal No. 3113*).

Sentence—Three years' imprisonment for carrying a firearm without a certificate of registration—The Firearms Law, Cap. 57, sections 4 and 7(1)(a)—Appellant a recidivist—Appeal against sentence dismissed—But sentence to run from conviction—The Criminal Procedure Law, Cap. 155 section 147(1)—See, also, herebelow.

Sentence—Appeal—Responsibility of imposing sentence rests primarily on trial Courts—Approach of the Court of Appeal to appeals against sentence—Principles applicable well settled—Shortly restated.

Appeals against sentence—Approach of the Court of Appeal—Principles applicable restated.

Firearms—Carrying firearms contrary to the Firearms Law, Cap. 57, sections 4 and 7(1)(a)—Sentence—See hereabove.

This is an appeal against a sentence of three years' imprisonment imposed on the appellant upon conviction on his own plea of carrying a firearm without a certificate of registration contrary to section 7(1)(a) of the Firearms Law, Cap. 57. The appellant is a recidivist.

Dismissing the appeal, although the sentence may appear to be rather heavy, the Court—

Held, (1). The approach of this Court to appeals against sentences imposed by trial Courts, is now well settled, having been stated in a number of cases constantly followed.

“The Court of Appeal will only interfere with a sentence imposed by the trial Court if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law ; or that the trial Court in considering sentence allowed itself to be influenced by matter which should not

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affect the sentence ; or if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case (See the cases quoted *infra*).

(2) It must always be remembered that the responsibility of imposing sentence rests primarily on the trial Court ; and that this Court will not readily interfere with a sentence, even if one or more of its members may be inclined to think that a sentence is on the heavy side.

(3) The sentence before us may appear to be rather heavy ; but we do not think that there is sufficient reason for interfering with it. The appeal will therefore be dismissed but in the circumstances we order under section 147 (1) of the Criminal Procedure Law, Cap. 155 that the sentence shall run from conviction.

Appeal dismissed.

Cases referred to :

Michael Afxenti "Iroas" v. The Republic (1966) 2 C.L.R. 116 ;

Voudaskas v. The Republic (1967) 2 C.L.R. 109 ;

Hapsides v. The Police reported in this Part at p. 64 *ante*.

Appeal against sentence.

Appeal against sentence by Christodoulos Charalambous Ttooulas who was convicted on the 10th July, 1969, at the District Court of Paphos (Criminal Case No. 2105/69) on one count of the offence of carrying a firearm without a certificate of registration contrary to section 7(1)(a) of the Firearms Law, Cap. 57 (as amended by Law 11 of 1959) and was sentenced by Papadopoulos, D.J. to three years' imprisonment.

L. N. Clerides, for the appellant.

S. Nicolaidis, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P. : This is an appeal against a sentence of three years' imprisonment, imposed on the appellant in the District Court of Paphos, upon conviction on his own plea, for carrying a firearm without a certificate of registration, contrary to section 7(1)(a) of the Firearms Law, Cap. 57. The sentence was imposed under section 4 of the

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statute as amended by Law 11 of 1959, which provides for punishment well beyond the jurisdiction of a single Judge. The case, however, was dealt with summarily by a District Judge upon a certificate by the Attorney-General under section 24(2) of the Courts of Justice Law, 1960, for summary trial.

The short facts of the case are that the appellant, a labourer of 58 years of age, of Philousa village in the District of Paphos, was caught soon after midnight in the Turkish village of Ay. Georghios, carrying a locally made shotgun. In a voluntary statement to the Police, the appellant said that he had bought the gun in question, earlier that day at a neighbouring village, without knowing that it was unregistered ; that he had bought it for his personal protection, in view of the conditions prevailing in that area, and particularly of his strained relations with a man known as " Kaloyiros " ; and that he was carrying the gun to his village.

The trial Judge took the view that the offence was " extremely serious " ; and that he thought it unfortunate that he had no jurisdiction to pass a sentence beyond three years' imprisonment.

Appellant's complaint, as presented to us by counsel on his behalf, is that a sentence of three years' imprisonment, in the circumstances, is manifestly excessive. This may be seen, at once, learned counsel argued, by comparing the sentence imposed on the appellant with that of £60 fine and £2.400 mils costs, imposed by the same Judge on the person who sold the gun to the appellant on that same day.

It is clear from the Judge's brief note regarding the two sentences, in dealing with this aspect of the case, that the Judge distinguished the case of the appellant from that of the other accused, not only on the difference of the offences charged (the one for carrying a firearm and the other for mere possession) but also on the difference in the personal circumstances of the two men.

The appellant is a recidivist with a list containing a conviction for shooting and causing grievous harm, for which he received a sentence of seven years' imprisonment in 1939 ; an attempted murder for which he received 10 years' imprisonment in 1946 ; and a conviction for causing grievous harm for which he received six years' imprisonment in 1963. The case of the other accused, in this conviction, is very different.

The approach of this Court to appeals against sentences imposed by trial Courts, is now well settled, having been stated in a number of cases constantly followed.

“The Court of Appeal will only interfere with a sentence (imposed by the trial Court) if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law ; or that the Court in considering sentence allowed itself to be influenced by the matter which should not affect the sentence ; or if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case”. (See *Michael Afxenti “Iroas” v. The Republic* (1966) 2 C.L.R. 116 ; *Nicos Voudaskas v. The Republic* (1967) 2 C.L.R. 109 ; *Menelaos Hapsides v. The Police*, reported in this Part at p. 64 *ante*).

It must always be remembered that the responsibility of imposing sentence rests primarily on the trial Court for reasons which need not be stated again ; and that this Court will not readily interfere with a sentence, even if one or more of its members may be inclined to think that a sentence is on the heavy side.

The sentence before us may appear to be rather heavy ; but we do not think that there is sufficient justification for interfering with it. The appeal will, therefore, be dismissed ; but in the circumstances we order, under section 147(1) of the Criminal Procedure Law (Cap. 155) that the sentence shall run from conviction.

Appeal dismissed.

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