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

STEPHANOS
CHRISTO-
DOULOU
v.
THE POLICE

STEPHANOS CHRISTODOULOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3069).

Road Traffic—Using a motorcycle on a public road without the cover of an insurance policy contrary to section 3(1)(2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 (as amended by Law 7/1960)—Sentence—Disqualification for holding or obtaining a driving licence—Appeal against disqualification dismissed—Appeal argued mostly on allegations of fact not placed before the trial Judge—And not placed before the Court of Appeal in due time for the hearing of this appeal.

Criminal Procedure—Appeal—Sentence—Appeal against sentence as being excessive—Primary responsibility for measuring sentence rests with trial Courts—Material on which counsel challenged the order of disqualification (supra) consisted mostly of allegations not placed before the trial Judge and not placed before the Court of Appeal in due time—Court of Appeal declined therefore to interfere with the order of disqualification in the absence of sufficient material duly put on record.

Appeal—Sentence—Appeal against sentence—See above.

Disqualification for holding or obtaining a driving licence—See above.

The Court after reviewing the facts dismissed this appeal against the sentence of disqualification for holding or obtaining a driving licence for a period of twelve months from conviction; and the Supreme Court :—

Held, (1). The material placed before the trial Judge in connection, *inter alia*, with disqualification was very scanty and in a way inaccurate.

(2)—(a) The material on which counsel for the appellant challenged the disqualification order consisted mostly of allegations of fact which had not been placed before the Court in due time for the hearing of this appeal.

(b) In a recent case of the same nature (*Dracos v. The Police*, reported in this Part at p. 16 *ante*) the same matter was discussed ; and the Court declined to interfere with a disqualification order in the absence of sufficient material duly put on the record.

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Appeal dismissed.

Cases referred to :

Dracos v. The Police (reported in this Part at p. 16 *ante*).

Appeal against sentence.

Appeal against sentence by Stephanos Christodoulou who was convicted on the 11th December, 1968, at the District Court of Nicosia, sitting at Morphou, on one count of the offence of using a motorcycle without having in force a policy in respect of third party risks contrary to section 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and Law 7 of 1960 and was sentenced by HjiConstantinou, D.J., to pay a fine of £5 and he was further disqualified from holding or obtaining a driving licence for a period of 12 months.

M. Christofides, for the appellant.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant was convicted in the District Court of Nicosia, sitting at Morphou, on three counts arising from the use of a motorcycle. These were : (1) driving a motorcycle on a road without being the holder of a driving licence, contrary to Regulations 27 (1) and 66 of the Motor Vehicles Regulations, 1959-1967 ; (2) using the motorcycle in question on a public road without the cover of an insurance policy, contrary to section 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and Law 7 of 1960 ; and (3) using the same motorcycle on a public road without a motor vehicle licence, contrary to Regulations 18 and 66 of the Motor Vehicles Regulations, 1959-1967. The conviction was based on appellant's plea of guilty to all the counts in the charge as above.

The advocate of the appellant in his plea in mitigation stated that the appellant, a labourer aged 25, working for the C.M.C. (Cyprus Mines Corporation) and living at a

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village some distance from his place of work, purchased the motorcycle in question "on the day of the offence", under the impression that an insurance policy covering its use was in force; and that on the date of the hearing, the appellant in the meantime obtained the required driving licence and had an insurance policy duly issued.

The trial Judge, in his notes for judgment, expressed the view that none of the grounds put forward on behalf of the accused was such "a judicial ground" on which to exercise his discretion regarding disqualification, in favour of the accused; and sentenced the appellant to a fine on each count, plus disqualification from holding or obtaining a driving licence for a period of 12 months on the second count (for driving without insurance).

A few days after his conviction, the appellant consulted a different advocate who filed on his behalf the present appeal against the sentence on the second count, particularly against the disqualification order. The new advocate put the appeal on three grounds: (a) that the trial Judge exercised his discretion on wrong principles; (b) that he failed to take into consideration circumstances personal to the offender in making the disqualification order, and (c) that the sentence on count 2 is manifestly excessive.

Arguing the appeal before us, Mr. Christofides this morning stated that he was doing so on behalf of his colleague who filed the appeal. He laid stress on the hardship which the disqualification created to the appellant in his travelling from his village to his place of work which, without his motorcycle, would require the appellant to get up as early as 3 o'clock in the morning in order to be able to reach his place of work at 6 a.m. He also drew attention to the fact that the appellant had, in the meantime, obtained the licences required.

Counsel for the prosecution, on the other hand, stated that according to his instructions from the Police file, the appellant had stated to the policeman who checked his papers at the time of the offence that he did not have his papers with him, which was only true in the sense that he had no papers; but was a lie in the obviously intended impression that he had the required licence at his house. In fact the appellant did not obtain such licences until some weeks after the offence. During the argument we pointed out to appellant's advocate that the material placed before

the trial Judge in connection with sentence and particularly in connection with disqualification, was very scanty and in a way inaccurate ; and that the material on which counsel was challenging the disqualification order consisted mostly of allegations of fact which had not been placed before the Court in due time for the hearing of this appeal.

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In a recent case of the same nature (*Costas Dracos v. Police*, reported in this Part at p. 16 *ante*) the same matters were discussed ; and the Court declined to interfere with the disqualification order in the absence of sufficient material, duly put on the record.

For the same reasons, we find that there is nothing on the record before us to justify interference with the sentence imposed by the trial Judge who, as repeatedly said in this Court, has the primary responsibility for measuring the sentence in a case.

This appeal must fail ; and is dismissed accordingly.

Appeal dismissed.