CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS AND DISTRICT COURTS

[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

1973
Jan. 22
—
LAMBROS PH. MOUSOULIDES
v.
THE POLICE

LAMBROS PH. MOUSOULIDES,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3389).

Sentence—Assaulting policeman—Assault causing actual bodily harm—Sections 244(*b*) *and* 243 *of the Criminal Code, Cap.* 154*—Sentence of four months' imprisonment—Undue weight given to Appellant's criminal record—No social investigation report before trial Judge—But such report put before Court of Appeal—Picture of Appellant given in this report different than the one presented to the Court below—Court of Appeal entitled to take notice of new factors stated in the report in approaching the matter of sentence—Appellant an "intermediate recidivist"—Rehabilitation measures have in his case a chance of success in view of the contents of said report—Sentence of imprisonment set aside—Probation order substituted therefor.*

Young offenders—Sentence—Social Investigation Report—Desirability that trial Judges should have before them such a report if they are contemplating sending to prison a person of a relatively young age—Cf. supra.

Social Investigation Report—Desirability—Young Offenders—See supra.

1973
Jan. 22
—
LAMBROS PH. MOUSOULIDES
v.
THE POLICE

Appeal against sentence—See supra.

Assault—Sentence—See supra.

The facts sufficiently appear in the judgment of the Supreme Court, allowing this appeal against sentence, setting aside a sentence of four months' imprisonment for assault and substituting therefor a probation order.

Cases referred to:

Stylianou v. *The Republic*, 1961 C.L.R. 265;

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

Michael v. *The Police* (1968) 2 C.L.R. 133;

Skoullou v. *The Police* (1969) 2 C.L.R. 27;

R. v. *Molins, R.* v. *Robson* "The Times" October, 1972.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Lambros Ph. Mousoulides who was convicted on the 28th November, 1972 at the District Court of Nicosia (Criminal Case No. 13463/72) on three counts of the offences of assaulting a police officer while acting in the due execution of his duty, of assault causing actual bodily harm and of disturbance contrary to sections 244(b), 243 and 95 respectively, of the Criminal Code, Cap. 154 and was sentenced by Colotas, D.J. to four months' imprisonment on counts 1 and 2, to run concurrently and he was further bound over in the sum of £200.— for three years to keep the peace on count 3

Appellant appeared in person.

A. Frangos, Senior Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: The Appellant has been convicted, by the District Court of Nicosia, of the offence of assaulting a policeman while he was acting in the due execution of his duty, contrary to section 244(b) of the Criminal Code, Cap. 154; of an assault on the same policeman, causing him actual bodily harm, contrary to section 243 of Cap. 154; and of disturbance, contrary to section 95 of Cap. 154.

He was sent to prison for concurrent terms of four months' imprisonment in respect of the first two offences; and in respect of the third offence he was bound over in the sum of £200 for three years to keep the peace and be of good behaviour.

The salient facts of the case are, briefly, as follows:-

On the date in question, at about 3.50 a.m., the policeman concerned saw the Appellant in a street, in Nicosia, being in the company of other persons and apparently attempting to annoy a foreign tourist. When the Appellant was asked to produce his identity card he refused to do so; then, he was requested by the policeman to accompany him to a police station, so that his identity could be checked; he refused to comply and when the policeman tried to arrest him he resisted and in doing so he assaulted the policeman, causing him bodily harm, which was, fortunately, nothing more than a few bruises.

On the basis of the above facts, which have been established by evidence adduced at the trial, we have met with no difficulty at all in rejecting the appeal against conviction; the conviction on all three counts was, in the circumstances, amply warranted.

We have decided, in accordance with our established practice, to treat this appeal, which was filed by the Appellant from prison without the assistance of counsel, and which is based on a vague ground, namely that the Appellant is innocent ("Εἶμαι ἀθῶος") as an appeal against sentence, too.

The trial Judge took a serious view of this case and stressed that police officers have to be protected in the execution of their duties; and we fully share this approach.

The trial Court took, also, into account the criminal record of the Appellant, which, starting in 1963 and stretching up to 1969, includes twelve previous convictions, although he is as yet only twenty-three years old. We think, however, that the trial Court has given undue weight to such record; most of his past offences were committed by the Appellant at a time when he was still a very young person and none of his previous convictions relates to an offence involving violence against the person; they are for offences of an altogether different nature.

The trial Judge has stated that, because of the criminal record of the Appellant, he thought that it would be superfluous to ask for a social investigation report about him. It has, however,

been stressed by this Court more than once that when a trial Judge is contemplating sending to prison a person of a relatively young age—such as the Appellant—a social investigation report should always be asked for (see, *inter alia Stylianou* v. *The Republic*, 1961 C.L.R. 265, *The Attorney-General* v. *Stavrou* 1962, C.L.R. 274, *Michael* v. *The Police* (1968) 2 C.L.R. 133, and *Skoullou* v. *The Police* (1969) 2 C.L.R. 27).

We have secured, with the assistance of counsel for the Respondents—whose fair stand in this case we do appreciate—a social investigation report which clearly shows that the Appellant, has, in the interval of time since his previous sentence, been married, has given up antisocial habits and has been trying hard to earn his living.

We, thus, have before us now a different picture of him than the one which was presented to the trial Court; there are new factors before us of which notice can be taken in approaching the matter of the sentence (see, in this respect, *R.* v. *Molins*, *R.* v. *Robson* reported in the London "Times" on the 27th October, 1972).

The Appellant appears to be what is described by D. A. Thomas, in his book " Principles of Sentencing" (at p. 20), as an "intermediate recidivist"; it is stated by the learned author that he uses this expression "to describe a person between the ages of twenty and forty who has a number of previous convictions and a corresponding experience of institutional life, who appears to be developing into a persistent recidivist without having reached the stage of institutionalization where the chance of successful rehabilitation is remote"; and it is added that the judicial policy now is "to attempt a rehabilitative measure in such cases, even where there is a substantial risk of failure, if there is some factor in the situation which suggests that there is a chance of success". We do think that what we have mentioned hereinbefore, as emerging from the social investigation report, are factors which do suggest that a rehabilitative measure has in this case a chance of success. Such a course has been adopted in a case of the same nature such as that of the present one: In " Principles of Sentencing", *supra* (at p. 102), reference is made to the case of *Baker* (unreported, decided on the 6th April, 1966) where the Appellant punched a policeman who stopped him after he had broken into a house; the Appellant, a man of thirty-five, had spent almost eight years continuously in prison, and although the Appellate Court considered that

sentences totalling three years were "extremely lenient", it nevertheless substituted a probation order in the hope that the Appellant would "reform before he spends the rest of his life in prison".

In the light of all the foregoing considerations, and bearing, too, in mind that the Appellant has already spent two months in prison, we have decided to set aside the sentences of imprisonment imposed in respect of the first two of the aforementioned offences and substitute in their place a probation order, under section 5(1) of the Probation of Offenders Law, Cap. 162; so, we hereby order that the Appellant be placed under the supervision of a probation officer till the expiry of two years from the date of his conviction and that, as he has his home in the District of Famagusta, he shall reside, for the purposes of the probation order, in that District. The sentence in respect of the third offence remains unaltered.

The appeal against sentence is, therefore, allowed to the extent stated above.

Appeal allowed.