

DEMETRIOS PIERIDES,

Appellant,

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DEMETRIOS
PIERIDES
v.
THE POLICE

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3569*).

Criminal Procedure—Plea of guilty—Conviction—Appeal—Appeal against conviction on a plea of guilty cannot be entertained—Section 135 (d) of the Criminal Procedure Law, Cap. 155.

Plea of guilty—Conviction and sentence—Appeal against—Evidence produced before the Court of Appeal, but not before the trial Court, showing that the Appellant was undoubtedly innocent of the offence for which he was punished—Interests of justice do not allow overlooking fact of innocence—Appeal against conviction dismissed—But appeal against sentence allowed—And in the very special circumstances of this case sentence set aside and appellant absolutely discharged under section 6 of the Probation of Offenders Law, Cap. 162.

Absolute discharge under section 6 of the Probation of Offenders Law, Cap. 162—See supra.

Probation of Offenders Law, Cap. 162—Section 62—See supra.

The Appellant took this appeal against his conviction on his own plea of the offence of using a motor-vehicle without being covered by insurance against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333; and, also, against the sentence imposed on him by the trial Judge, namely a fine of £10 and disqualification for a period of three months from holding or obtaining a driving licence.

Shortly after his conviction the Appellant discovered that at the material time he was fully covered by the required insurance against third party risks. A certificate of insurance produced for the first time before the Court of Appeal leaves no doubt

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about the position. Faced with this very exceptional case the Court of Appeal:—

Held, (1) We agree with counsel for the Respondents that in view of section 135 (b) of the Criminal Procedure Law, Cap. 155, as it was applied, *inter alia*, in the case of *Athlitiki Efimeris "O Filathlos" and Another v. The Police* (1967) 2 C.L.R. 249—the Appellant's appeal against conviction cannot be entertained.

(2) (a) Regarding the appeal against sentence counsel for the Appellant sought to place before us for the first time "special reasons" for avoiding disqualification which were not placed before the Court; to which counsel for the Respondents objected relying on *Dracos v. The Police* (1969) 2 C.L.R. 16.

(b) We do not intend to disregard the *Dracos* case; but the present case is clearly distinguishable from it because of a very exceptional feature—not really in the nature of a "special reason"—namely that the Appellant appears to have had a good defence to the charge in respect of which he pleaded guilty. As shown by the certificate of insurance concerning his own car, the Appellant was at the material time, covered by it while driving, also, a motor-car not belonging to him as in fact he was doing in the present instance.

(3) (a) As this certificate was not produced before the trial Court we are not now faced on appeal with a situation in which the plea of guilty was inconsistent with the facts as explained to the trial Court, in which case we would have been empowered to order a new trial on that ground.

(b) But the interests of justice, do not allow us to overlook that the Appellant was, in fact, innocent of the offence for which he was punished, as a result of his own plea of guilty, and, in the very exceptional circumstances of this case; we have decided to discharge the Appellant absolutely under section 6 of the Probation of Offenders Law, Cap. 162; therefore, the sentence passed on him is hereby set aside.

Appeal allowed.

Cases referred to:

Athlitiki Efimeris "O Filathlos" and Another v. The Police
(1967) 2 C.L.R. 249;

Dracos v. The Police (1969) 2 C.L.R. 16, *distinguished*.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Demetrios Pierides who was convicted on the 9th May, 1974 at the District Court of Kyrenia (Criminal Case No. 533/74) on one count of the offence of using a motor-car without being covered by an insurance against third party risks contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and was sentenced by Boyiadjis, S.D.J. to pay £10.- fine and he was further disqualified from holding or obtaining a driving licence for a period of three months.

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E. Efstathiou, for the Appellant.

N. Charalambous, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant appeals against his conviction of the offence of using a motor-car without being covered by insurance against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333; and, also, against the sentence which was imposed on him on conviction of the said offence, namely a fine of £10 and disqualification from holding or obtaining a driving licence for a period of three months.

We agree with counsel for the respondents that in view of section 135 (b) of the Criminal Procedure Law, Cap. 155—as it was applied in, *inter alia*, the case of *Athlitiki Efimeris "O Filathlos" and Another v. The Police* (1967) 2 C.L.R. 249—the Appellant's appeal against his conviction cannot be entertained because before the Court below he has pleaded guilty to the offence in question; and it is to be noted, in this connection, that at the trial he did have the benefit of advice of counsel who appeared for him.

Regarding the appeal against sentence, it has been submitted before us that, as the Appellant is a school-teacher, he needs his driving licence in relation to his work, because he has to drive from where he lives to his work, in an area where there do not exist other transport facilities; but this matter was not mentioned at all, in mitigation of sentence, before the trial Court, though in the charge the Appellant was described as being a teacher; and there has been cited, by counsel for the Respondents, the case of *Dracos v. Police* (1969) 2 C.L.R. 16,

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where it was held that special reasons for avoiding disqualification have to be put forward before the trial Court and that they cannot be raised for the first time on appeal.

We do not intend to disregard the *Dracos* case; but the present case is clearly distinguishable from it because of a very exceptional feature—not really in the nature of a special reason—namely that the Appellant appears to have had a good defence to the charge in respect of which he pleaded guilty: As shown by the certificate of insurance concerning his own car, the Appellant was, at the material time, covered by it while driving, also, a motor-car not belonging to him, as in fact he was doing in the present instance, when he was driving a motor-car belonging to accused 2 at the trial, who is not an Appellant before us.

As this certificate was not produced before the trial Court we are not now faced on appeal with a situation in which the plea of guilty was inconsistent with the facts as explained to the trial Court and we cannot order a new trial on such a ground; but, the interests of justice, do not allow us to overlook that the Appellant was, in fact, innocent of the offence, for which he was punished, as a result of his plea of guilty, and, in the very special circumstances of this case, we have decided to discharge the Appellant absolutely under section 6 of the Probation of Offenders Law, Cap. 162; therefore, the sentence passed upon him is set aside.

Appeal allowed.