[TRIANTAFYLLIDES, P., L. LOIZOU, MALACHTOS, JJ.]

ANDREAS ATHANASSIOU PHILIPPOU AND ANOTHER,

Appellants,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeals Nos. 3653, 3654).

Criminal Law—Sentence—Store-breaking—Sections 291 and 294(a) of the Criminal Code, Cap. 154—Nine and eighteen months' imprisonment—Young offenders—Aged 24 and 20—Social investigation reports—Not asked for by trial Court—Produced before Court of Appeal—Their contents showing that appellants not hardened criminals as described by trial Court in its judgment—Had they been before trial Court it would, in all probability, have imposed a more lenient sentence—Desirability to individualize sentence in "breaking offences"—Effect of favourable probation report—Less regard should have been paid to retribution and more to possibility of reformation—Appellants have fully co-operated with police in the investigation of the offence—Sentences reduced.

Young offenders—Sentence—Social investigation report—When it is contemplated to send to prison a young offender such report should be asked for and duly considered.

Store-breaking—Sections 291 and 294(a) of the Criminal Code, Cap. 154—Sentence—Desirability of individualizing sentence in "breaking offences".

"Breaking Offences"—Sentence—Desirability to individualize

The two appellants complain against sentences of imprisonment of nine and eighteen months, respectively, imposed on them by the Military Court upon their plea of guilty to a charge of store-breaking. Appellant 2 was given a longer sentence, because, at his own request, there was taken into consideration, in passing sentence, another similar offence.

The appellants being young first offenders, aged 24 and 20 years, respectively, the Court of Appeal called for social investigation reports whose contents did show that the appellants were not hardened criminals, as they were described by the trial Court in its judgment. In 5 this connection the Court of Appeal observed that "unfortunately, the Military Court, in spite of repeated admonitions by us in other cases to the effect that when it is contemplated to send to prison a young offender a social investigation report should be asked for and 10 duly considered, did not request, and so it did not have before it, such reports in respect of the appellants".

Counsel for the respondent conceded that had the said reports been before the trial Court, it would, in all probability, have imposed more lenient sentences. 15

Held, 1. In "breaking offences" it is desirable to individualize, as much as possible the sentence. (See Thomas on Principles of Sentencing pp. 138, 139).

2. A favourable probation report may operate in a decisive manner in favour of a young offender who has 20 committed an offence such as that for which the appellants have been sent to prison. (See *Thomas* (*supra*) at p. 20).

3. Bearing in mind that in *The Atorney-General of the Republic* v. *Stavrou and Others,* 1962 C.L.R. 274, 25 this Court did take the exceptional course of putting on probation persons who had been found guilty of shop-breaking, we feel that we can take, in the present case, too, a rather specially lenient course, by reducing the sentences passed on the appellants. 30

4. Each case depends on its own particular merits and in the present instance we feel that there should have been paid less regard to the aspect of retribution and more to the possibility of reforming the appellants within as short as possible periods of time. 35

5. We have, also, taken into account the fact that the appellants have co-operated fully with the police in the investigations of the offences committed by them; and, as a result, a lot of the goods stolen were traced.

6. Consequently, the sentence imposed on appellant 40

1 is reduced to one of five months' imprisonment and that imposed on appellant 2 to one of twelve months' imprisonment.

Appeals allowed.

5 Cases referred to:

Attorney-General of the Republic v. *Stavrou and Others*. 1962 C.L.R. 274.

Appeals against sentence.

Appeals against sentence by Andreas Athanassiou Phi-
10 lippou and Another who were convicted on the 11th September, 1975 at the Military Court sitting at Larnaca (Case No. 159/75) on one count of the offence of store-breaking contrary to sections 20, 21, 291 and 294(a) of the Criminal Code Cap. 154 and section 5 of the Mili-
15 tary Criminal Code and Procedure Law, 1964 (Law 40/64) and were sentenced to eighteen months' imprisonment and nine months' imprisonment each, respectively.

M. Papapetrou with *A. Mathikolonis*, for appellant 1.

20 *M. Papapetrou*, for appellant 2.

S. Tamassios, for the respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The two appellants were sentenced by the Military Court to terms of imprisonment
25 of nine and eighteen months, respectively, as from September 11, 1975, when they pleaded guilty to a charge of store-breaking; the store concerned is a Customs store at Larnaca.

Appellant 2 was given a longer sentence because, at
30 his own request, there was taken into consideration, in passing sentence, another similar offence committed by him when he broke into the same store on another occasion.

Both appellants complain that the sentences passed
35 upon them are manifestly excessive.

There is no doubt that the offences in question are of a serious nature and, therefore, it cannot be said that

the sentences in question are not justifiable if only the seriousness of the offences is to be taken into account.

But the appellants are young first offenders, aged 24 and 20 years, respectively; and. unfortunately, the Military Court, in spite of repeated admonitions by us in other cases to the effect that when it is contemplated to send to prison a young offender a social investigation report should be asked for and duly considered, did not request, and so it did not have before it, such reports in respect of the appellants. These reports are now before us (having been prepared on our instructions) and their contents do show that the appellants are not hardened criminals, as they were described by the trial court in its judgment.

It has, in the circumstances, been fairly conceded by counsel for the respondent that, had the said reports been before the trial court, it would, in all probability, have imposed more lenient sentences.

In Thomas on Principles of Sentencing it is stated (at pp. 138, 139) that in "breaking offences", such as that involved in his case, it is desirable to individualize, as much as possible. the sentence; and, elsewhere (at p. 20) in the same textbook. it is pointed out that a favourable probation report may operate in a decisive manner in favour of a young offender who has committed an offence such as that for which the appellants have been sent to prison.

Bearing in mind that in *The Attorney-General of the Republic* v. *Stavrou and Others*, 1962 C.L.R. 274, this Court did take the exceptional course of putting on probation persons who had been found guilty of shop-breaking, we feel that we can take, in the present case, too, a rather specially lenient course, by reducing the sentences passed on the appellants. Each case depends on its own particular merits and in the present instance we feel that there should have been paid less regard to the aspect of retribution and more to the possibility of reforming the appellants within as short as possible periods of time.

We have, also, taken into account the fact that the appellants have co-operated fully with the police in the

investigations of the offences committed by them; and, as a result, a lot of the goods stolen were traced.

Consequently, the sentence imposed on appellant 1 is reduced to one of five months' imprisonment and that 5 imposed on appellant 2 to one of twelve months' imprisonment; and these appeals are allowed accordingly.

Appeals allowed.

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