

1978 September 20

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

RENOS CHRISTOU PHILAKTIDES,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 3922*).

*Criminal Procedure—Plea of guilty—Plea in mitigation of sentence—
Incompatible with plea of guilty—Conviction set aside—Retrial
ordered.*

5 The appellant pleaded guilty to the offence of having failed
to enlist in the National Guard and was sentenced to three
months' imprisonment. At the trial he appeared on his own,
without the assistance of counsel, and what he said then in
mitigation of sentence amounted, in effect, to a version which
was inconsistent with his plea of guilty.

10 *Upon appeal against sentence:*

Held, that the safest course, in the interests of justice, is to
set aside his conviction on the ground that his plea in mitigation
appears, *prima facie*, to be incompatible with his plea of guilty
and to order a retrial of his case. (See, *inter alia*, *Attorney-
General v. Mahmout*, 1962 C.L.R. 181).

Appeal allowed.

Cases referred to:

Attorney-General v. Mahmout, 1962 C.L.R. 181.

Appeal against sentence.

20 Appeal against sentence by Renos Christou Philaktides who
was convicted on the 25th August, 1978 at the Military Court
sitting at Nicosia (Case No. 286/78) on one count of the offence
of having failed to enlist in the National Guard, contrary to

section 22(1)(a) of the National Guard Law, 1964 (Law 20/64) and was sentenced to three months' imprisonment.

E. Efstathiou with *C. Loizou*, for the appellant.

Chr. Tselingas, for the respondent.

TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant has appealed against the sentence of three months' imprisonment which was passed upon him by a Military Court, on August 25, 1978, after he had pleaded guilty to the offence of having failed to enlist in the National Guard, contrary to section 22(1)(a) of the National Guard Law, 1964 (Law 20/64).

At his trial the appellant appeared on his own, without the assistance of counsel; and we are now faced with the situation that what he has said then in mitigation of sentence—especially when it is looked at in the light of the explanations given by his counsel today—seem to amount, in effect, to a version which is inconsistent with his plea of guilty.

Moreover, various conflicting allegations were made, respectively, by both sides, which do not appear to have been duly examined, at the time, by the trial Court.

Faced with such a situation we think that the safest course, in the interests of justice, is to set aside his conviction on the ground that his plea in mitigation appears, *prima facie*, to be incompatible with his plea of guilty (see, *inter alia*, in this respect, *Attorney-General v. Mahmout*, 1962 C.L.R. 181) and to order a retrial of his case.

This appeal is, therefore, allowed accordingly.

Appeal allowed.