

1979 July 2

[A. LOIZOU, MALACHTOS, SAVVIDES, JJ.]

CONSTANTINOS KYRIACOU IOANNOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4033).

Military offences—Sentence—Desertion in the interior—Nine months' imprisonment—No social investigation report before trial Court—And personal circumstances of appellant, who appeared without counsel, not placed before trial Court—Had they been placed they would have been given proper weight and leniency might have been shown—Desirability for uniformity of sentences—Sentence reduced.

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Criminal Law—Sentence—Uniformity of sentences—Desirability for.

The appellant was sentenced to nine months' imprisonment, by the Military Court, for the offence of desertion in the interior. At the trial no social investigation report was produced and the accused was not represented by counsel. From the social investigation report, which was prepared upon directions from the Supreme Court, it appeared that the appellant was brought up in difficult economic, social and psychological circumstances. His father had deserted the family when the children were infants and after twelve years of living apart from their mother, he obtained a divorce and got married to another lady.

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Upon appeal against sentence:

Held, that though this Court shares the view of the Military Court as regards the seriousness of the offence, the appellant, appearing without counsel, did not place before the Military Court all personal circumstances and especially those having direct relation to his family background; that had the personal circumstances of the appellant been placed before the trial Court, they would have been given the proper weight with the

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result that further leniency might have been shown to the appellant; that in a recent case*, the facts of which have a great similarity to the present case, the sentence was reduced from nine months to four months' imprisonment; that uniformity of sentences so far as possible and warranted by the circumstances of each case, is most desirable for the good administration of criminal justice; and that, accordingly, the sentence of nine months' imprisonment is manifestly excessive and will be reduced to four months' imprisonment.

Appeal allowed.

Cases referred to:

Apostolou v. Republic (Criminal Appeal No. 4007 not yet reported).

Appeal against sentence.

15 Appeal against sentence by Constantinos Kyriacou Ioannou who was convicted on the 12th April, 1979 at the Military Court sitting at Nicosia (Case No. 119/79) on one count of the offence of desertion in the interior, contrary to sections 29(1)(2) and 31(2) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to nine months' imprisonment.

D. Zavallis, for the appellant.

St. Tamassios, for the respondent.

The judgment of the Court was given by:

25 A. LOIZOU J.: This is an appeal against a sentence of nine months imprisonment imposed on the appellant by the Military Court of Nicosia on the 12th April, 1979 for the offence of desertion in the interior, contrary to sections 29(1) and (2) and 31(2) of the Military Criminal Code and Procedure Law, 1964, (Law No. 40 of 1964, as amended).

35 The appellant joined the National Guard on the 11th January, 1978. Just before the present offence was committed, he had an appendectomy and was given sick-leave which expired on the 9th September, 1978. On that day, however, he did not report for duty but went to his village where he stayed until the 30th January, 1979 when he was arrested by the Military Police.

* *Apostolou v. Republic* (Criminal Appeal No. 4007 not yet reported).

His explanation was that on the 9th September, when he was due to return, he went very close to his unit, but for psychological reasons he could not report for duty and left. In his plea in mitigation the appellant said that what prevented him from returning to his unit was the fact that he had, somehow, been ill-treated by a Corporal whom he named. 5

The appellant had no previous convictions and for this desertion was also punished with 40 days disciplinary detention. He has also seven other disciplinary offences.

When this appeal came up for hearing, a direction was made that a Welfare Social Investigation Report be prepared and produced, so that this Court would have a complete picture of the personal circumstances and the family background of the appellant who had not been represented by counsel at the trial. Such report might give useful information for the determination of the appropriate sentence to be imposed. 10 15

In passing the sentence appealed from, the Military Court stressed the seriousness of this offence in the present circumstances of the Country, and with regard to the appellant's allegation of ill-treatment by the Corporal, the Court pointed out that had it been true what he said, he should have reported the Corporal so that he would be punished. It also took into consideration the good past record of the appellant and that he had been punished disciplinarily to 40 days detention. 20

As it appears from the Welfare Report produced on appeal, the appellant was born on the 14th March, 1961 and enlisted voluntarily in January, 1978, that is to say, when he was less than 17 years old and before his age group was called up. He had been through many family problems and he was brought up in difficult economic, social and psychological circumstances. His father had deserted the family when the children were infants and after twelve years of living apart from their mother, he obtained a divorce and married to another lady since then. 25 30

The ground upon which the appeal is taken, is that the sentence imposed is manifestly excessive. 35

We fully share the view of the Military Court as regards the seriousness of such offences. In the present case, however, we feel that the appellant appearing without counsel, did not place

before the Military Court all personal circumstances and especially those having direct relation to his family background. We feel that had they been placed before the Military Court, they would have been given the proper weight with the result
5 that further leniency might have been shown to the appellant.

In a recent case, *Apostolou v. The Republic*, Criminal Appeal 4007 (as yet unreported), the facts of which have a great similarity to those of the one under consideration, this Court reduced the sentence imposed for such an offence from nine
10 months to four months imprisonment. We mention this, as uniformity of sentences so far as possible and warranted by the circumstances of each case, is most desirable for the good administration of criminal justice.

In the light of all the foregoing, we think that we should reduce
15 the sentence of nine months imprisonment as being manifestly excessive in the circumstances of this case, to one of four months imprisonment as from the 12th April, 1979.

The appeal is, therefore, allowed accordingly.

Appeal allowed.