

1980 February 5

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, SAVVIDES, JJ.]

MIKIS NICOLAOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4105*).

Criminal Law—Sentence—Assault causing actual bodily harm—Section 243 of the Criminal Code, Cap. 154—Husband assaulting his wife and son while under strain of family problem—Six months' imprisonment—Criminal record—Weight—Mitigating factors—Circumstances of offence—Reconciliation with wife—Appellant bread-winner of his family, consisting of his wife and four minor children—His stay in prison indirectly affecting them adversely—Sentence manifestly excessive—Reduced.

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The appellant was sentenced to six months' imprisonment after pleading guilty to having committed assaults causing actual bodily harm to his wife and to his fourteen years old son. The assaults in question were committed in the course of a family quarrel and while the appellant was labouring under great strain and anxiety due to the fact that, at the time, one of his other children was seriously ill. He was the bread-winner of his family, which consisted of his wife and four minor children and has been reconciled with his wife who regarded his conduct as satisfactory. He had five previous convictions during the period of 1971 to 1978, three of which were for assaults.

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Upon appeal against sentence:

Held, that though the bad record of the appellant is not overlooked, when an offender is sentenced for a particular offence he is not being punished for his past but he is punished for what he has done on the occasion in relation to which he has been brought before the Court; that the appellant is the bread-winner of his family and his stay in prison indirectly affects them adversely, too, in that they are suffering privations so long as he is

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out of work and in prison; that in the circumstances the sentence of six months' imprisonment is manifestly excessive and a sentence of three months' imprisonment is sufficient to punish the appellant for the offence in question, even when due weight has been given to the factor of his rather bad criminal record; and that, accordingly, the sentence, must be reduced to three months' imprisonment.

Appeal allowed.

Appeal against sentence.

10 Appeal against sentence by Mikis Nicolaou who was convicted on the 11th December, 1979 at the District Court of Larnaca (Criminal Case No. 3511/79) on two counts of the offence of assault causing actual bodily harm, contrary to section 243 of the Criminal Code Cap. 154 and was sentenced by Constanti-
15 nides, D.J. to six months' imprisonment on each count to run concurrently.

Appellant appeared in person.

R. Gavrielides, Counsel of the Republic, for the respondents.

20 TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant appeals against the sentence of six months' imprisonment which was passed upon him, on December 11, 1979, when he had pleaded guilty to having committed assaults causing actual bodily harm to his wife and to his fourteen years old son.

25 He has appeared before us without the assistance of counsel and he has contended that, in the circumstances of this case, the sentence is excessive.

30 We do not overlook at all the bad criminal record of the appellant, which contains five previous convictions during the period of 1971 to 1978, three of which are for assaults. It has, however, been stressed repeatedly that when sentenced for a particular offence an offender is not being punished for his past, but he is punished for what he has done on the occasion in relation to which he has been brought before the Court.

35 It seems that the assaults against his wife and son were committed by the appellant in the course of a family quarrel and while he was labouring under great strain and anxiety due to the fact that, at the time, one of his other children was seriously ill;

actually, when the appellant came home, late at night, there started an argument between him and his wife as regards what should be done about their ill child; his son intervened and the argument became a heated quarrel in the course of which the appellant committed the assaults, against both his wife and his son, to which he has pleaded guilty. 5

As it appears from a social investigation report dated November 27, 1979, the appellant has been reconciled with his wife and his conduct is now regarded by her as very satisfactory.

He is the bread-winner of his family, which consists of his wife and four minor children and, therefore, his stay in prison indirectly affects them adversely, too, in that they are suffering privations so long as he is out of work and in prison. 10

In the circumstances, we think that the sentence of six months' imprisonment is manifestly excessive and that one of three months' imprisonment is sufficient to punish the appellant for the offences in question, even when due weight has been given to the factor of his rather bad criminal record. 15

We, therefore, reduce accordingly the sentence passed on the appellant in relation to both assaults and this appeal is allowed to that extent. 20

Appeal allowed.