

1981 September 14

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

COSTAS PETSAS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4227*).

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*Criminal Procedure—Appeal against sentence—Order sending young person to a Reform School—Is a sentence for the purposes of appeal against sentence—Section 135 of the Criminal Procedure Law, Cap. 155.*

5 *Criminal Law—Sentence—Breaking and stealing—Young offender aged fifteen—Order sending him to Lambousa Reform School—Appellant leading an undisciplined life and behaving without being under the effective control of anybody—Already under*  
10 *probation but not co-operating with Welfare Officer and exhibiting a hostile and negative attitude towards her—Sentence not manifestly excessive or wrong in principle—Individualized enough and not a manifestly deterrent measure—Upheld.*

15 The appellant, who was fifteen years' old, was convicted on his own plea of guilty, of the offence of breaking, on two different occasions, into the same kiosk in Nicosia and stealing therefrom various articles. The trial Court ordered that he should be sent to the Lambousa Reform School and has appealed against this order. The parents of the appellant have not been living together for a long time and the appellant has been living with  
20 his mother who worked at a bar. The appellant was leading an undisciplined life and he behaved without being under the effective control of anybody. He has been repeatedly absent from the secondary school which he has been attending, and in October, 1980, he was put on probation for a period of a year;  
25 but, during this period, he did not show any cooperation with the welfare officer in charge of his case and, on the contrary,

he has behaved in a hostile and negative attitude towards her; furthermore, he has refused to attend at the District Welfare Office in Nicosia whenever he was asked to do so. The welfare officer who prepared the social investigation report stated before the trial Court that, in view of the attitude of the appellant, the probation order had become unworkable. 5

The headmaster of the Lambousa Reform School and other welfare officers reported that it was not possible to place the appellant at a youth hostel and that sending him to the Reform School would be the best course in the circumstances. 10

Counsel for the appellant produced before the trial Court a report by a clinical psychologist who stated that the appellant should be given psychotherapy and that during such treatment he should not be detained in a place such as a Reform School, but should be free to be with his parents. 15

*Held*, (1) that an order sending young persons, such as the appellant, to a Reform School, is a sentence, for the purposes of appeal against sentence, under section 135 of the Criminal Procedure Law, Cap. 155, even though, there is a distinction between imprisonment and detention in a reformatory for quite special purposes, in that the treatment which juveniles detained in a reformatory are to undergo is different from the treatment to which they would be subjected in prison (see *Evans v. Police*, 18 C.L.R. 57). 20

(2) That this Court has not been convinced by the appellant's side that it should set aside the order appealed from, on the ground that it is an excessive sentence or wrong in principle or that it is not individualized enough to fit the particular case of the appellant or that it is a manifestly deterrent measure, as suggested by counsel for the appellant; that, on the contrary, sending him to the Reform School was a course required to be adopted both for the benefit of the appellant and for the benefit of the society in general; accordingly the appeal must be dismissed. 25 30

*Appeal dismissed.* 35

Cases referred to:

- Evans v. The Police*, 18 C.L.R. 57;
- R. v. Smith* [1964] Crim. L.R. 70;

*Pikatsas v. The Police* (1963) 1 C.L.R. 1;

*Yenovkian v. The Republic* (1963) 1 C.L.R. 44;

*Anastassiou v. The Republic* (1969) 2 C.L.R. 193.

**Appeal against sentence.**

- 5 Appeal against sentence by Costas Petsas who was convicted on the 21st January, 1981 at the District Court of Nicosia (Criminal Case No. 17075/80) on two counts of the offence of breaking and stealing, contrary to section 294 of the Criminal Code, Cap. 154 and was sentenced by Nicolaou, D.J. to go to  
10 Lambousa Reform School.

*A. Eftychiou*, for the appellant.

*A. M. Angelides*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

- 15 TRIANTAFYLIDIS P. read the following judgment of the Court. The appellant, who at the material time was fifteen years old, was convicted, on his own plea of guilty, of the offences of breaking, contrary to section 294 of the Criminal Code, Cap. 154, on two different occasions, in March and April, 1980,  
20 into the same kiosk in Nicosia and stealing therefrom various articles.

The trial Court ordered that he should be sent to the Lambousa Reform School and the appellant has appealed against this order.

- 25 There is no doubt that, as decided in *Evans v. The Police*, 18 C.L.R. 57, an order sending young persons, such as the appellant, to a Reform School, is a sentence, for the purposes of appeal against sentence, under section 135 of the Criminal Procedure Law, Cap. 155, even though, as pointed out in the judgment in the aforementioned case, there is a distinction between imprisonment and detention in a reformatory for quite special  
30 purposes, in that the treatment which juveniles detained in a reformatory are to undergo is different from the treatment to which they would be subjected in prison.

- 35 As it is pointed out by Piki J. in his textbook on Sentencing in Cyprus (1978), at p. 19:—

“Next to imprisonment, the sending of a young offender

under 16 to a reform school is the most severe punishment that may be inflicted upon a youth resulting in his compulsory removal to a reform school and obligatory stay therein for the period of time envisaged by the law. It is a species of institutional punishment intended to help the youth improve his ways and outlook while, at the same time, he is given the opportunity to learn a trade or craft and be ready on his release to employ himself usefully. Institutional treatment of this nature is principally intended to help a youth discipline his ways in a controlled environment".

In Thomas on Principles of Sentencing, 2nd ed., at p. 18, there is cited the following passage from the judgment in *R. v. Smith*, [1964] Crim. L.R. 70:-

"In the case of a young offender there can hardly ever be any conflict between the public interest and that of the offender. The public have no greater interest than that he should become a good citizen. The difficult task of the Court is to determine what treatment gives the best chance of realizing that objective'".

The author proceeds to point out that, though the policy expressed in the above passage from the judgment in the *Smith* case, *supra*, is subject to exceptions where the offence concerned is either extremely serious or is thought to require a particular emphasis on deterrence "the most typical appeal by an offender under 21 centres on the question whether borstal training, probation or some other individualized measure is most likely to contribute to law-abiding behaviour in the future".

In the course of the hearing of this appeal before us counsel for the appellant referred us to the cases of *Pikatsas v. The Police*, (1963) 1 C.L.R. 1, *Yenovkian v. The Republic*, (1963) 1 C.L.R. 44 and *Anastassiou v. The Republic*, (1969) 2 C.L.R. 193.

In the *Pikatsas* case, *supra*, the Court was dealing with a drug addict who had been sent to prison for two years' imprisonment and, on appeal, his sentence was set aside and he was put on probation because it was arranged for him to undergo medical treatment by way of rehabilitation, in order to assist him to get away from the use of drugs.

In the *Yenovkian* case, *supra*, the appellant had been sentenced to three years' imprisonment, but on appeal he was discharged from custody on condition that he would come up for judgment when called upon within the period during which he would be  
5 away in Switzerland for psychiatric treatment. After his return from Switzerland he was allowed to go to Beirut for further education. While there he was sentenced to five months' imprisonment for an offence and after serving his sentence he returned to Cyprus. In sentencing him, once again, to imprisonment for three years, the Supreme Court stated the following  
10 (at p. 46):—

“The course of action taken by this Court has not been extended to the appellant because his parents were able to afford a treatment, but from the desire to assist, if  
15 possible, in helping him to overcome what appears to be a particular problem with him. This effort has cost his parents, not only a great deal of anxiety but also a great deal of money.

The object sought to be served was that if the appellant could be assisted over his difficulty, he would become—it was hoped—a good citizen, and the country would be saved the expense of keeping him in custody while he was serving his term. There would be a general gain to the society by treating this case in such a manner.

This approach of this Court is not new. We are interested in reformation and in rehabilitation, if that appears to be possible. We have taken, what appeared to be appropriate, action in other cases without regard to social position or financial status of the person in trouble.

However, there comes a time when such efforts have to be brought to an end. We feel that every reasonable effort has been made in this case and the time has now come when the Court, in the discharge of its responsibility, must pass sentence. This young man has been apparently  
30 hard to handle; he is now 19 years of age; his first difficulties appeared when he was, I think 15 years of age, and it is most unfortunate that he has got into trouble. However, he is now old enough to realise that unless he wishes to spend the rest of his life in custody—which he would probably not enjoy—he must cease unlawful activities.  
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He has already had a taste of custody which was apparently not very pleasant. None of it is. But imprisonment seems to be the only effective means of protecting the society in many cases.

The only course that the Court now has is to impose 5  
on this young man imprisonment; and we feel that the term originally imposed in this case, namely three years is the proper penalty. We sentence him to that imprisonment.

The sentence will run from now. He had his opportunity 10  
to reform but did not and he must serve his penalty”.

In the *Anastassiou* case, *supra*, the appellant was sentenced to two years’ imprisonment for possession of narcotic drugs and the Supreme Court, after ordering the preparation of a social investigation report and a report from the Prison welfare officer, as well as a medical report, decided to put him on probation. Vassiliades P. stated the following (at pp. 195–196) 15  
in delivering his judgment:–

“In dealing, however, on July 1st, 1969, with the case of 20  
the appellant now before us, and particularly in considering the medical aspect and effect of his sentence, we took the view that the hearing of the appeal should be adjourned until after the vacation, to enable the Prison Authorities to deal with the appellant as a medical case; and to report to the Court on the effect of any treatment which the medical 25  
services might decide to give to the appellant as an addict, in the meantime. .

When the appeal came up before the Court again on October 22, 1969, we had the benefit of a social investigation report from the Limassol District Welfare Office 30  
(where the appellant comes from) as well as a report from the Prison Social Worker who was personally in attendance. This officer moreover produced the medical report (dated 30th September, 1969) regarding appellant’s condition 35  
which after dealing with the state of his amputated hand, further certified that at the time of the examination, the appellant presented ‘no signs or symptoms of drug addiction’.

After hearing all concerned, we found it necessary to adjourn the case further until today, to enable the prison services to make arrangements for a new adjusting operation to appellant's forearm; and we now have before us  
5 three further reports regarding the medical aspect of appellant's case. The appellant has been subjected in the meantime to a fresh successful operation to the amputated end of his right forearm; and the Prison Social Worker, who was again in attendance, informed the Court that during  
10 the period between appellant's admission to prison on May 19, 1969, and the present day i.e. a period of just over six months, the appellant proved co-operative and responsive to treatment and that his conduct, notwithstanding his handicaps, was in every way satisfactory.

15 Appellant's case in the appeal before us, rests mostly on a plea of repentance and of solemn assurances that he will change his ways of life, severing himself completely from friendships and associations which got him involved in activities for which he was repeatedly before the Courts  
20 in the past.

We gave the matter most anxious consideration in the light of all the material before us; including the reports to which we have already referred; and including the effect of these last six months of imprisonment on the general  
25 outlook on life of this unfortunate man, as seen by the prison social and medical services. Eventually, we came to the conclusion, not without considerable difficulty, that if he could be saved in his family and to the community in general, by a fresh chance on probation, the attempt would be worth the risk; and socially justified. On the  
30 principles adopted by this Court in the case of *Robert Levon Yenovkian v. The Republic*, 1963, Cyprus Law Reports Part 1 (Criminal) p. 44, and in the case of *Georghios Pikatsas v. The Police*, (reported in the same volume at p. 1) we decided to give the appellant this further chance. After  
35 the improvement of his general condition as a result of the recent operation to his arm, and after the proof which he gave of his ability to co-operate with the Prison Social services, we think that he may now be able to take the desired turn in his life; and we decided to give him the  
40 chance to do so under a probation order".

In the present case we have before us a social investigation report from which it appears that the parents of the appellant have not been living together for a long time and the appellant has been living with his mother who works at a bar.

It appears from the said report that the appellant is leading an undisciplined life and he behaves without being under the effective control of anybody. He has been repeatedly absent from the secondary school which he has been attending, and in October, 1980, he was put on probation for a period of a year; but, during this period, he did not show any cooperation with the welfare officer in charge of his case and, on the contrary, he has behaved in a hostile and negative attitude towards her; furthermore, he has refused to attend at the District Welfare Office in Nicosia whenever he was asked to do so. The welfare officer who prepared the social investigation report stated before the trial Court that, in view of the attitude of the appellant, the probation order had become unworkable.

There were produced, also, before the trial Court, reports by the headmaster of the Lambousa Reform School and by other welfare officers from which it appears that it is not possible to place the appellant at a youth hostel and that sending him to the Reform School would be the best course in the circumstances.

On the other hand, counsel for the appellant produced before the trial Court a report by a clinical psychologist who states that the appellant should be given psychotherapy and that during such treatment he should not be detained in a place such as a Reform School, but should be free to be with his parents.

In the light of all relevant considerations we feel that we have not been convinced by the appellant's side that we should set aside the order appealed from, on the ground that it is an excessive sentence or wrong in principle or that it is not individualized enough to fit the particular case of the appellant or that it is a manifestly deterrent measure, as suggested by counsel for the appellant. On the contrary, we do agree that sending him to the Reform School was a course required to be adopted both for the benefit of the appellant and for the benefit of the society in general.

So, we dismiss this appeal accordingly.

*Appeal dismissed.*