1981 November 3

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

NICOS CHARALAMBOUS AND ANOTHER,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos.* 4241, 4242).

Criminal Law—Sentence—Burglary—One year's imprisonment on appellant 1 *and five years' imprisonment on appellant* 2—*Mitigating factors—Both appellants confessed commission of all the offences, expressed their deep repentance and assisted police to discover stolen articles—Appellant* 1 *nineteen years' old, a first offender and of good character—Led astray by appellant* 2—*Sentence passed on appellant* 1 *reduced to eight months' imprisonment—Appellant* 2 *with bad previous record and had been sentenced to various terms of imprisonment the longest for two and a half years—Has had a very unhappy family life—Circumstances of his life recently changed by his engagement to be married—Desirability that sentence should be increased in length by gradual stages rather than by sudden large jumps—Sentence reduced to three and a half years' imprisonment.*

The appellants pleaded guilty to the offence of burglary and appellant 1 was sentenced to one year's imprisonment and appellant 2 to five years' imprisonment. The offence in question was committed when appellants broke and entered a dwelling house in Larnaca and stole therefrom three thousand U.S.A. dollars, one thousand and fifty German marks, twenty five English pounds and twenty-five Cyprus pounds. Both appellants were doing their military service when they committed the above offence; and when they were sentenced by the trial Court there were, at their own request, taken into consideration in passing sentence four other similar offences which they had committed together during the same night when they committed the aforementioned burglary, as well as another similar offence which was committed by appellant 2 on his own.

Both appellants cooperated fully with the police after they were arrested, they confessed all the offences which they had committed, expressed their deep repentance and assisted the police to discover what they had stolen.

Appellant 1 was nineteen years old and had no previous convictions, he was of good character and very industrious.

Appellant 2 was twenty-two years old and after the commission of the above offence he became engaged to a Cypriot girl who lived in London, where he intended, eventually, to settle himself. He had a bad previous record, which commenced in 1975; since then he has been convicted of similar offences on eleven occasions and was sentenced to various terms of imprisonment the longest of which was for a period of two and a half years. He has had a very unhappy family life because, in view of his antisocial conduct, his parents adopted towards him a rejecting attitude, having written him off as a lost cause, and were comparing him unfavourably with his brother and sister. Lately their attitude has changed, they were trying to help him to mend his ways and, in accordance with the opinion expressed by the welfare officer who prepared the social investigation report, the change of attitude of his parents towards him and his recent engagement were having a beneficial effect on him and are helping him to become a law-abiding person.

Upon appealing against sentence both appellants contended that the above sentences were manifestly excessive, they expressed their repentance and promised to lead an honest life from now onwards; they, also, asked to be given the chance to resume and complete their military service without having to stay in prison for long periods of time, which do not count as part of their military service.

Held, (1) that there is no doubt that appellant 1 was led astray by appellant 2; that in view of this and because of his good character, clean past record and very young age, he should be given a chance to reform after spending less time in prison than the period for which he was sentenced by the trial Court; and that, therefore, the sentence which was passed upon him will be reduced from one year to eight months' imprisonment.

(2) That taking into account the fact that it seems that the circumstances of the life of appellant 2 are changing in a manner

which might enable him, even at this rather late stage of his course along the path of crime, to retrieve himself and find his way back to honesty, and been influenced by the fact that in the past he has never been sent to prison, for offences such as those for which he is now punished, for a period of more than two and a half years and sending him now to prison for a period of five years is too big a jump from the longest sentence to which he was previously subjected for similar offences, this Court has decided to take a calculated risk by reducing his sentence so as to avoid the risk of crushing completely, due to the length of his imprisonment, his hopes for a better life; accordingly the sentence passed on appellant 2 will be reduced to one of three and a half years' imprisonment.

Appeal allowed.

Cases referred to:

Tryfona v. *The Republic*, 1961 C.L.R. 246;

Christofides v. *The Republic* (1970) 2 C.L.R. 78 at p. 80;

Meytanis v. *The Police* (1966) 2 C.L.R. 84 at p. 85.

Appeal against sentence.

Appeal against sentence by Nicos Charalambous and Another who were convicted on the 10th July, 1981 by a Military Court sitting at Nicosia (Case No. 83/81) on one count of the offence of burglary contrary to section 292 of the Criminal Code Cap. 154 and appellant 1 was sentenced to one year's and appellant 2 to five years' imprisonment.

Appellants appeared in person.

St. Tamassios, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. By these two appeals, which have been heard together in view of their nature, the appellants complain against the sentences passed upon them by the Military Court after they had pleaded guilty to the offence of burglary, contrary to section 292 of the Criminal Code, Cap. 154.

Appellant 1 (who is the appellant in criminal appeal No. 4241) was accused 2 before the trial Court and appellant 2 (who is the appellant in criminal appeal No. 4242) was accused 1 before the trial Court.

The appellants, who at the time were doing their military service in the National Guard, committed the said offence on the night of August 19 to 20, 1980; they broke and entered a dwelling house in Larnaca and stole therefrom three thousand U.S.A. dollars, one thousand and fifty German marks, twenty-five English pounds and twenty-five Cyprus pounds.

Appellant 2 was sentenced to five years' imprisonment as from July 10, 1981, and appellant 1 was sentenced to one years' imprisonment as from the same date.

Both appellants have contended that the above sentences are manifestly excessive, they have expressed their repentance and promised to lead an honest life from now onwards; they have, also, asked to be given the chance to resume and complete their military service without having to stay in prison for long periods of time, which do not count as part of their military service.

Appellant 2 is twenty-two years old and after the commission of the above offence he became engaged to a Cypriot girl who lives in London, where he intends, eventually, to settle himself.

He has, unfortunately, a bad previous record, which commences in 1975; since then he has been convicted of similar offences on eleven occasions and was sentenced to various terms of imprisonment the longest of which was for a period of two and a half years.

Appellant 1 is nineteen years old and he has no previous convictions.

When the two appellants were sentenced by the trial Court there were, at their own request, taken into consideration in passing sentence four other similar offences which they had committed together during the same night when they committed the aforementioned burglary, as well as another similar offence which was committed by appellant 2 on his own.

It emerges from the record before us that both appellants cooperated fully with the police after they were arrested, they confessed all the offences which they had committed, expressed their deep repentance and assisted the police to discover what they had stolen.

We have before us social investigation reports in respect of both the appellants, which were, also, before the trial Court.

It appears that appellant 2 has had a very unhappy family life because, in view of his antisocial conduct, his parents adopted towards him a rejecting attitude, having written him off as a lost cause, and were comparing him unfavourably with his brother and sister. Lately, however, their attitude has changed, they are trying to help him to mend his ways and, in accordance with the opinion expressed by the welfare officer who prepared the social investigation report, the change of attitude of his parents towards him and his recent engagement are having a beneficial effect on him and are helping him to become a law-abiding person.

Appellant 1 appears, from the contents of the social investigation report concerning him, to be a person of good character and very industrious.

Counsel appearing for the respondents has argued that the sentences which were passed upon the appellants are not manifestly excessive and has, in this connection, drawn our attention to the fact that the appellants committed together many offences and, also, to the bad record of appellant 2.

He has referred us to the case of *Tryfona* v. *The Republic*, (1961) C.L.R. 246, where the appellant, a young man of twenty-one years old, was convicted, on his own plea, of breaking into a dwelling house at night-time and stealing therefrom money and other property and had asked the Court to take into consideration seven other outstanding cases of similar nature. He, also, admitted eleven previous convictions mostly of a similar nature. He was sentenced to six years' imprisonment and his appeal against sentence was dismissed.

Counsel for the respondents cited, also, the case of *Christofides* v. *The Republic*, (1970) 2 C.L.R. 78, where the appellant was sentenced to imprisonment for five years for burglary and had a long list of previous convictions. His appeal against sentence was dismissed and Vassiliades P. said the following in delivering his judgment (at p. 80):

> "The approach of this Court to appeals against sentence is well settled in a line of cases. The responsibility for

measuring the appropriate sentence, must rest primarily with the trial Court, for reasons which need no elaboration here. Sentencing is indeed a difficult and delicate function of the Court in the exercise of its criminal jurisdiction. It must be performed with all due care; but this Court will not interfere with a sentence on appeal, unless there are sufficient reasons for such intervention. We shall only refer to two cases out of many on the point: *Michael Afxenti Iroas* v. *The Republic* (1966) 2 C.L.R. 116, at p. 118; and *Pullen* v. *The Republic* (reported in this Part at p. 13 ante; at pp. 16–17). No such reason has been shown in the instant appeal; which must therefore be dismissed".

On the other hand, it must be borne in mind that, as pointed out by Josephides J. in *Meytanis* v. *The Police*, (1966) 2 C.L.R. 84, 85, although it is the duty of the Court to punish severely offences of a serious nature, it is, nevertheless, "also the duty of the Court to see whether it would not be possible for young men to be given a chance to reform and become useful citizens".

There is no doubt that appellant 1 was led astray by appellant 2. In view of this and because of his good character, clean past record and very young age, we think that he should be given a chance to reform after spending less time in prison than the period for which he was sentenced by the trial Court and we, therefore, reduce the sentence which was passed upon him from one year to eight months' imprisonment.

We have found considerable difficulty in dealing with the case of appellant 2, because in view of his bad criminal record and the seriousness of the offences which he has committed, we might have reached, quite justifiably, the conclusion that we should not interfere with the sentence that was passed upon him.

We have, on the other hand, had to take into account the fact that it seems that the circumstances of his life are changing in a manner which might enable him, even at this rather late stage of his course along the path of crime, to retrieve himself and find his way back to honesty.

We have, in the end, decided to take a calculated risk by reducing his sentence so as to avoid the risk of crushing completely, due to the length of his imprisonment, his hopes for a better life.

We have, also, been influenced, in adopting such a course, by the fact that in the past he has never been sent to prison, for offences such as these for which he is now punished, for a period of more than two and a half years and sending him now to prison for a period of five years is, in our opinion, too big a jump from the longest sentence to which he was previously subjected for similar offences. We find it very useful to quote, in this connection, the following passage from Thomas on Principles of Sentencing, 2nd ed., p. 204:-

> "It has been argued that progressive increases in the lengths of sentences imposed on a particular offender reflect his gradual loss of credit for good character as the number of his previous convictions expands, rather than an aggravation of the basic penalty for the offence. It follows that until all mitigation for good character is exhausted, his sentences should increase in length by gradual stages rather than by sudden large jumps. For this reason the Court will frequently reduce a sentence not considered excessive in relation to the offence for which it is imposed, if the difference between the present sentence and the longest sentence previously received by the appellant is too great to be justified by changing circumstances. In *Berridge* a man of 26 received sentences totalling seven years for his part in a series of burglaries. He had fourteen previous convictions and had served several previous terms of imprisonment for burglary and similar offences, the longest being a sentence of thirty months. The Court came to the conclusion that seven years was too long a sentence, partly because it represented 'too big a leap from the longest sentence to which he had previously been subjected'. The sentence was reduced to five years. In *White* the appellant was sentenced to a total of thirty months' imprisonment for offences of theft and assault; his longest previous sentence was nine months. The Court was told that the imposition of the longer sentence had had 'a shattering effect on this man', and decided to reduce the sentence to eighteen months. In *Davis* a man of 24 whose longest previous sentence was twelve months received consecutive sentences of five years for robbery and two years for theft; the Court considered that seven years was 'excessive in the case of a young man who has not previously received longer sentences than twelve months and whose record

does not show him..... to be a hopeless case'. The sentences were made concurrent".

We have, therefore, decided to reduce the sentence passed on appellant 2 from one of five years' imprisonment to one of three and a half years' imprisonment.

The appeals of both appellants are allowed accordingly.

Appeals allowed.