

1981 December 1

[TRIANTAFYLIDIS, P., L. LOIZOU, MALACHTOS, JJ.]

LOUCAS CHR. KALOSYNATOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4252).

Criminal Law—Sentence—Housebreaking and stealing—Fifteen months' imprisonment—Personal and family circumstances of appellant, fact that he confessed all his offences, and his clean past record taken into account by trial Court—Sentence sufficiently individualized—Neither manifestly excessive nor wrong in principle in view of the seriousness and multitude of the offences. 5

The appellant pleaded guilty to the offences of house breaking and stealing from the house concerned various articles valued at C£66.—and was sentenced to fifteen months' imprisonment. In passing sentence there were taken into consideration, at his own request, another offence of housebreaking, committed by him in January 1981, when he stole from a house various articles valued at C£42.—, and an offence of causing malicious damage to property, contrary to section 324(1) of Cap. 154, which was committed at the time of the aforesaid housebreaking in January 1981; also, offences, in June, 1980, of shopbreaking contrary to section 294(a) of Cap. 154 and stealing from a shop two cameras valued at C£465 and, lastly, an offence of stealing, in March 1980, from a caravan various articles valued at C£86. 10 15

The appellant, was born in January, 1962, and was, at the time of the commission of all the offences in question, serving in the National Guard. He had an unhappy childhood because his father was mentally ill for most of the time; and he appeared to be a short-tempered and nervous person. Prior to his enlistment in the National Guard he was working at a grocery shop and he was found to be industrious and honest. 20 25

Upon appeal against sentence it was contended that the sentence which was passed upon him was manifestly excessive and that it has not been sufficiently individualized to fit the personal circumstances of the appellant.

5 *Held*, that the trial Court has stressed, in its judgment, that it took into account his otherwise clean past and the fact that he confessed all his offences to the police and that, as a result, all the things stolen by him were returned; that, also, there were taken into consideration his personal and family circumstances, as they appeared from the social investigation report
10 which was before the trial Court, and that it had approached the case of the appellant with leniency; that, therefore, the sentence passed upon the appellant has been sufficiently individualized by the trial Court and that, in the light of the circumstances of this case, it is neither manifestly excessive nor wrong
15 in principle; accordingly the appeal must be dismissed (*Michael The Police* (1968) 2 C.L.R. 133, *Evangelou v. The Police* (1970) 2 C.L.R. 45, *Chrysostomou v. The Police* (1972) 2 C.L.R. 23 distinguished because of the seriousness and multitude of the offences which were committed by this appellant).
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Appeal dismissed.

Cases referred to:

Michael v. The Police (1968) 2 C.L.R. 133;
 Evangelou v. The Police (1970) 2 C.L.R. 45;
25 *Chrysostomou v. The Police* (1972) 2 C.L.R. 23.

Appeal against sentence.

 Appeal against sentence by Loucas Chr. Kalosynatou who was convicted on the 25th August, 1981 by a Military Court sitting at Limassol (Case No. 136/81) on one count of the offence
30 of housebreaking, contrary to section 292(a) of the Criminal Code, Cap. 154 and was sentenced to fifteen months imprisonment.

E. Lemonaris, for the appellant.

St. Tamassios, for the respondent.

35 TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant has appealed against the sentence of fifteen months' imprisonment, as from August 25, 1981, which was

passed upon him by the Military Court when he pleaded guilty to the offences of housebreaking, contrary to section 292(a) of the Criminal Code, Cap. 154, and of stealing from the house concerned various articles valued at approximately C£66, on a date between December 18, 1980, and January 14, 1981. 5

In passing sentence there were taken into consideration, at his own request, another offence of housebreaking, committed by him in January 1981, when he stole from a house various articles valued at C£42, and an offence of causing malicious damage to property, contrary to section 324(1) of Cap. 154, which was committed at the time of the aforesaid housebreaking in January 1981; also, offences, in June, 1980, of shopbreaking contrary to section 294(a) of Cap. 154 and stealing from the shop two cameras valued at C£465 and, lastly, an offence of stealing, in March 1980, from a caravan various articles valued at C£86. 10 15

From a social investigation report, which was before the trial Court, it appears that the appellant, who was born in January, 1962, was, at the time of the commission of all the offences in question, serving in the National Guard. It seems that he had an unhappy childhood because his father was mentally ill for most of the time. The appellant appears to be a short-tempered and nervous person. Prior to his enlistment in the National Guard he was working at a grocery shop and he was found to be industrious and honest. 20 25

It has been submitted on his behalf that the sentence which was passed upon him is manifestly excessive and that it has not been sufficiently individualized to fit the personal circumstances of the appellant.

The need to individualize sentences, in relation to breaking offences, too, has been recognized by our Supreme Court (see, for example, what is stated in this connection by Piki J. in his book on Sentencing in Cyprus, 1978, p. 59) and it is, indeed, a course which is particularly desirable in relation to young offenders (see Thomas on Principles of Sentencing, 2nd ed., p. 18). 30 35

We have been referred, in this respect, by counsel for the appellant, to *Michael v. The Police*, (1968) 2 C.L.R. 133, where a sentence of C£60 fine, imposed on a young offender, aged

twenty-five, for storebreaking, contrary to section 294(a) of Cap. 154, was replaced by a probation order for a period of two years, in view of the circumstances in which the offence was committed, as well as of the character and the personal
5 circumstances of the appellant in that case.

In the *Michael* case, *supra*, however, the value of what was stolen was practically insignificant, that is only five hundred mils, and it does not appear that the appellant in that case had committed any other similar offences, as the appellant in the
10 present case has done.

Another case which was cited by counsel for the appellant is that of *Evangelou v. The Police*, (1970) 2 C.L.R. 45, where a sentence of one year's imprisonment for shopbreaking, contrary to section 294(a) of Cap. 154, which was passed upon a young
15 man, aged twenty-five, who was a first offender, was reduced to a term of six months' imprisonment, in the light of a social investigation report, which was not available at the trial but which was prepared for the purposes of the appeal. In that case the appellant had stolen, on a number of occasions, small
20 amounts of money from an adjacent to his place of work grocery shop and he, also, stole a cigarette lighter from another shop. The Supreme Court after stressing that it interferes on appeal with a sentence imposed by a trial Court—which has the primary responsibility for passing sentence—only when it is made to
25 appear that there are sufficient reasons for doing so, proceeded to reduce the sentence passed upon that appellant from a period of one year's imprisonment to one of six months' imprisonment, coupled with a binding over in the sum of C£100 to keep the peace.

30 Finally, in *Chrysostomou v. The Police*, (1972) 2 C.L.R. 23, a sentence of eighteen months' imprisonment for housebreaking and stealing, which was passed on an offender aged fifteen years was reduced to one of nine months' imprisonment. The appellant in that case had stolen from the house of a neighbour
35 the amount of C£1, having left behind in the cupboard from which he stole it the amount of C£7, and on two other occasions he broke into a coffee shop in his village and stole therefrom in all the amount of C£5.

It is clear that the case of the present appellant is distinguish-

able from those of the appellants in *Michael, Evangelou* and *Chrysostomou, supra*, because of the seriousness and multitude of the offences which were committed by this appellant.

The trial Court has stressed, in its judgment, that it took into account his otherwise clean past and the fact that he confessed all his offences to the police and that, as a result, all the things stolen by him were returned; also, that there were taken into consideration his personal and family circumstances, as they appeared from the social investigation report which was before the trial Court, and that it had approached the case of the appellant with leniency. 5 10

We are of the opinion that the sentence passed upon the appellant has been sufficiently individualized by the trial Court and that, in the light of the circumstances of this case, it is neither manifestly excessive nor wrong in principle. 15

We see, therefore, no reason to interfere with such sentence and we dismiss this appeal accordingly.

Appeal dismissed.