

1981 May 22

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

STAVRAKIS ALVIS CONSTANTINIDES,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4185*).

5 *Criminal Law—Sentence—Driving a motor vehicle without a driving licence and without a policy in respect of third party risks—Five and fifteen days' imprisonment and one year's disqualification—Mitigating factors—Appellant seventeen years' old, and his development adversely affected because he was the child of a broken family—Genuinely repented—Sentence of imprisonment substituted by fine—Disqualification upheld.*

10 The appellant pleaded guilty to the offences of driving a motor-vehicle without a driving licence and of using the said motor-vehicle without there being in force in relation to its use an insurance policy for third party risks and was sentenced to five and fifteen days' imprisonment, respectively; and was, also, disqualified from holding or obtaining a driving licence for a period of one year.

15 He was only seventeen years old when he was sentenced; and since then he has enlisted in the National Guard where he was doing his military service. He appeared before the trial Court without having the benefit of the assistance of counsel and, therefore, having received no advice as to how to conduct
20 his case he failed to place before the trial Court personal circumstances of his which could have presumably been treated as mitigating factors.

25 Upon appeal against sentence Counsel for the appellant stressed, and was not disputed by counsel for the respondents, that the appellant was a person whose development in life has been very much influenced adversely by the fact that he was

the child of a broken family; also, that he has fully realized the seriousness of the offences which he has committed and that he has genuinely repented.

Held, that after taking into account all pertinent considerations, this Court will substitute in the place of the sentence of imprisonment, which was passed upon the appellant, sentences of C£10 and C£40 fines, respectively, and will leave the disqualification order intact; and that the appeal must be allowed accordingly. 5

Appeal allowed. 10

Cases referred to:

- Stylianou v. Police*, 1962 C.L.R. 152;
Kyriakides v. Police (1963) 1 C.L.R. 80;
Dracos v. Police (1969) 2 C.L.R. 16;
Christodoulou v. Police (1969) 2 C.L.R. 32; 15
Miltiadous v. Police (1970) 2 C.L.R. 81;
Lazarou v. Police (1970) 2 C.L.R. 18.

Appeal against sentence.

Appeal against sentence by Stavrakis Alvis Constantinides who was convicted on the 21st November, 1980 at the District Court of Limassol (Criminal Case No. 12228/80) on one count of the offence of driving without a driving licence, contrary to regulations 25(1) and 71 of the Motor Vehicles Regulations, 1973 and section 19 of the Motor Vehicles and Road Traffic Law, 1972, (Law 86/72) and on one count of the offence of driving without a policy in respect of third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 (as amended by Law 7/60) and was sentenced by Eleftheriou, D.J. to concurrent terms of imprisonment of 5 and 15 days', respectively. 20 25 30

C. Tsirides, for the appellant.

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

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant was sentenced on November 21, 1980, to five and fifteen days' imprisonment, respectively, and was, also, 35

disqualified from holding or obtaining a driving licence for a period of one year, after he had pleaded guilty to the offences of driving a motor-vehicle without a driving licence and of using the said motor-vehicle without there being in force in
5 relation to its use an insurance policy for third-party risks.

The appellant was released on bail by the trial Court pending the outcome of this appeal.

The appellant was only seventeen years old when he was sentenced; and since then he has enlisted in the National Guard
10 where he is doing his military service.

He appeared before the trial Court without having the benefit of the assistance of counsel and, therefore, having received no advice as to how to conduct his case he failed to place before the trial Court personal circumstances of his which could have
15 presumably been treated as mitigating factors.

It has been stressed today by counsel for the appellant, and was not disputed by counsel for the respondents, that the appellant is a person whose development in life has been very much influenced adversely by the fact that he is the child of a broken
20 family; also, that he has fully realized the seriousness of the offences which he has committed and that he has genuinely repented.

Counsel for the respondents, has, very fairly, drawn our attention to *Stylianou v. The Police*, 1962 C.L.R. 152, *Kyriakides v. The Police*, (1963) 1 C.L.R. 80, *Dracos v. The Police*, (1969) 2 C.L.R. 16, *Christodoulou v. The Police*, (1969) 2 C.L.R. 32 and *Miltiadous v. The Police*, (1970) 2 C.L.R. 81, which show that a sentence of a fine coupled with a disqualification order has been regarded, on certain occasions in the past, as a sufficient
30 sentence for the offence of driving without a third-party insurance.

Of course, each case should be approached on the basis of its own particular circumstances and the above case-law can only be regarded as indicating the trend in assessing sentence
35 in cases of this nature.

A very useful case which was cited to us by counsel for the respondents is that of *Lazarou v. The Police*, (1970) 2 C.L.R. 18, where a sentence of one month's imprisonment coupled

with disqualification from holding or obtaining a driving licence for a period of three months, which was imposed for using a motor-vehicle without third-party insurance, was reduced on appeal to a fine of C£50 coupled with a disqualification order for six months. In that case Josephides J. said the following: 5

“I should state, however, that having regard to the increasing number of motor-car accidents, which are now a daily occurrence, we have reached a stage where, save in exceptional circumstances, the only deterrent punishment in the public interest and protection would appear to be a sentence of imprisonment in the case of careless drivers who endanger human life or who still fail to take out an insurance against third-party risks”. 10

While we fully endorse the above view of Josephides J. we note, at the same time that in the *Lazarou* case, *supra*, the Supreme Court decided in the end to set aside the sentence of imprisonment and substitute in its place a sentence of a fine in view of the fact that the appellant in that case was a first offender. 15

Likewise, in the present case we have decided, after taking into account all pertinent considerations, to substitute in the place of the sentence of imprisonment, which was passed upon the appellant, sentences of C£10 and C£40 fines, respectively, and to leave the disqualification order intact. 20

This appeal is, therefore, allowed accordingly. 25

Appeal allowed.