

1981 December 18

[TRIANAFYLIDES P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

ΣΑΥΒΑΣ ΒΑΣΣΟΥ ΠΕΤΡΟΥ,

Appellant,

v.

THE REPUBLIC,

*Respondent.**(Criminal Appeal No. 4282).*

Military offences—Sentence—Desertion for four days—Three months' imprisonment—Seriousness of the offence—Mitigating factors—Appellant's repentance and his return to his unit of his own volition—Sentence reduced.

The appellant pleaded guilty to the offence of desertion, 5
contrary to sections 29 and 31 of the Military Criminal Code
and Procedure Laws, 1964–1979. The offence in question was
committed when the appellant was granted one day's leave of
absence on July 24, 1981 but he prolonged without permission
his absence from his unit up to July 28, 1981, when he returned 10
to it of his own volition. The reason for his very short-lived
temporary desertion was that he wanted to make arrangements
in order to play music at a wedding. He was punished by his
superiors in the National Guard with eighteen days' detention
in respect of the above offence. He was twenty years old and 15
he has been punished in the past disciplinarily as a soldier but
he has never been convicted of any criminal offence.

Upon appeal against sentence:

Held, (by majority) that this is a special case of desertion
of a really not serious nature, in respect of which the appellant 20
deserved to be treated with leniency especially in view of the
very strong mitigating factor that he returned to his unit of his
own volition; that taking, also, into account in his favour that
when he appeared before this Court today and argued this
appeal in person he expressed his repentance for what he has 25
done, the sentence which was passed upon him should be reduced
to one month's imprisonment as from the date when he was
sent to prison.

Held, further, that this Court is unanimous in stressing that offences of desertion are, as a rule, very serious in view of their nature and leniency can only be shown solely in exceptional instances.

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Appeal allowed.

Cases referred to:

Vassiliou v. Republic (1975) 2 C.L.R. 13;*Constantinou v. Republic* (1975) 2 C.L.R. 114.**Appeal against sentence.**

10 Appeal against sentence by Savvas Vassou Petrou who was convicted on the 24th November, 1981 by a Military Court sitting at Limassol (Case No. 347/81) on one count of the offence of desertion, contrary to sections 29 and 31 of the Military Criminal Code and Procedure Laws, 1964-1979 and
15 was sentenced to three months' imprisonment.

Appellant appeared in person.

P. Ioulianou, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant has been sentenced to three months' imprisonment
20 as from November 24, 1981, by the Military Court, after he had pleaded guilty to the offence of desertion contrary to sections 29 and 31 of the Military Criminal Code and Procedure Laws, 1964 to 1979.

25 The appellant has appealed against the said sentence as being excessive.

According to the facts appearing on the record before us he was granted one day's leave of absence on July 24, 1981, but he prolonged without permission his absence from his unit up to July 28, 1981, when he returned to it of his own
30 volition. The reason for his very short-lived temporary desertion was that he wanted to make arrangements in order to play, as he had undertaken to do, music at a wedding.

He was punished by his superiors in the National Guard with eighteen days' detention in respect of his desertion, as
35 aforesaid, for four days.

He is twenty years old. He has been punished in the past disciplinarily as a soldier for infringements of military regulations, but he has never been convicted of any criminal offence.

We have been referred by counsel for the respondent to two previous cases, those of *Vassiliou v. The Republic*, (1975) 2 C.L.R. 13 and *Constantinou v. The Republic*, (1975) 2 C.L.R. 114; in the first of these cases a sentence of six months' imprisonment for desertion which lasted for nineteen days was found to be a severe but not a manifestly excessive sentence, whilst in the other case a sentence of six months' imprisonment for desertion which lasted for five weeks was reduced to imprisonment for four and a half months, but one of the Judges of the Court dealing with that case had strong reservations against such a course.

It has been repeatedly stressed, and it is, also, obvious from the above case-law, that each case has to be dealt with on its own merits. In the present case two of us feel that we are faced with a special case of desertion of a really not serious nature, in respect of which the appellant deserved to be treated with leniency, especially in view of the very strong mitigating factor that he returned to his unit of his own volition. We, also, take into account in his favour that when he appeared before us today and argued this appeal in person he expressed his deep repentance for what he has done. We are, therefore, of the opinion that the sentence which was passed upon the appellant should be reduced to one month's imprisonment as from the date when he was sent to prison. The other Judge of this Court feels that the sentence imposed on the appellant by the Military Court is not excessive but he has decided, in the end, not to deliver a dissenting judgment.

We are, of course, all three of us unanimous in stressing that offences of desertion are, as a rule, very serious in view of their nature and leniency can only be shown solely in exceptional instances.

In the result the sentence passed on the appellant is reduced to one month's imprisonment and this appeal is allowed accordingly.

Appeal allowed.