

1981 September 18

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

EVGENIOS KLEOVOULOU,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4237*).

Criminal Law—Sentence—House-breaking and stealing—Two years' imprisonment—Co-accused receiving eighteen months—Trial Judge's conclusion regarding leading role of appellant not warranted by material on record—Erroneous to send to prison appellant for a longer period than co-accused—Mitigating factors—Appellant's personal and family circumstances—Confession of commission of offence to police and enabling them to recover most of the items stolen—Need that sentences should not be such so as to discourage people from confessing crimes—Complainant a relative of appellant, has forgiven him and has no complaint regarding money not recovered—Sentence reduced to one year's imprisonment.

Criminal Law—Sentence—Assessment—Primary responsibility of trial Courts—Principles on which Court of Appeal interferes with sentence on appeal.

The appellant pleaded guilty to the offence of housebreaking and stealing jewels valued at C£6,000, the sum of 10,500 U.S.A. dollars and the sum of C£1,300 and was sentenced to two years' imprisonment. Though he committed the offence in question together with another person he was treated by the trial Judge as having played the leading role and his co-accused was sentenced to only eighteen months' imprisonment.

The appellant was a person with an unstable personality who has had to receive treatment at the Psychiatric Institutions at Athalassa. He was married with three children and was

the only breadwinner of his family. As soon as he was arrested he confessed the commission of the offence and the Police were thus enabled to find most of the stolen articles and about half of the money. During the hearing of the appeal the complainant, who was the sister of the wife of the appellant, appeared before the Court of Appeal and stated that she has forgiven the appellant for what he has done and that she did not have any complaint against him as regards the amounts of money which were not recovered. 5

Upon appeal against sentence: 10

Held, (1) that the conclusion of the trial Judge as regards the leading role of the appellant was not warranted by the material on record; and that, therefore, it was erroneous to send the appellant to prison for a longer period than his co-accused.

(2) That though it is the primary responsibility of trial Courts to assess sentences and the powers of this Court to interfere with sentences on appeal are limited within the boundaries laid down by certain well established principles (see, *inter alia*, *Kollitiris v. The Police* (1971) 2 C.L.R. 200 at p. 207) this Court has reached the conclusion, in the light of the above considerations, that in the present case it will have to interfere with the sentence imposed by the trial Court; and that, therefore, it has decided to reduce the sentence passed upon the appellant to one year's imprisonment. 15 20

Appeal partly allowed. 25

Observations: We feel that we should stress once again that in such cases sentences, even for serious offences, should not be such as to discourage people from making a clean breast of what they have done, when they are arrested by the police, and from helping the police to undo the consequences of their lawbreaking. 30

Cases referred to:

Kollitiris v. The Police (1971) 1 C.L.R. 206 at p. 207;

Kyprianou v. The Republic (1971) 2 C.L.R. 158;

Afxenti v. The Republic (1966) 2 C.L.R. 116 at p. 118. 35

Appeal against sentence.

Appeal against sentence by Evgenios Kleovoulou who was convicted on the 23rd June, 1981 at the District Court of Nicosia (Criminal Case No. 37521/81) on one count of the offence of
 5 house breaking, contrary to sections 292 and 255 of the Criminal Code Cap. 154 and was sentenced by Nikitas, S.D.J. to two years' imprisonment.

Appellant appeared in person.

D. Papadopoulou (Mrs.), for the respondents.

10 TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant was sentenced, after he had pleaded guilty to the offences of housebreaking and stealing contrary to sections 292 and 255 of the Criminal Code, Cap. 154, to two years' imprisonment.

15 He has contended today that the said sentence is manifestly excessive.

The offences in question are very serious, not only because of their nature, but because, on this particular occasion, there were stolen jewels valued at C£6,000, the sum of 10,500 USA
 20 dollars and the sum of C£1,300. There have been recovered only the jewels, about half of the amount of the dollars, and just less than half of the amount of the Cyprus pounds.

We would not have been inclined to interfere at all in this case had it not been for the fact that, as it appears from the
 25 judgment of the trial Judge, the appellant—(who committed the offences together with another person, who was his co-accused at the trial of this case and pleaded guilty, too)—was treated by the trial Judge as having played the leading role in the commission of the offences concerned, with the result
 30 that the appellant was sentenced, as stated already, to two years' imprisonment, whereas his co-accused was sentenced to only eighteen months' imprisonment.

We are of the opinion that the conclusion of the trial Judge as regards the leading role of the appellant is not warranted
 35 by the material on record. Indeed, the fact that his co-accused is a person with a much worse criminal record than the appellant,

having been convicted in the past of much more serious offences, such as attempted robbery, carrying a revolver and possession of explosives, points clearly to the opposite conclusion.

We are, therefore, of the view that it was erroneous to send the appellant to prison for a longer period than his co-accused. 5

Counsel for the respondents has very fairly observed that the sentence passed upon the appellant might be considered as too severe in view, in particular, of the personal and family circumstances of the appellant which appear in a social investigation report which was before the trial Court. 10

It is clear from this report that the appellant is a person with an unstable personality who, also, has had to receive treatment at the Psychiatric Institutions at Athalassa. He is married and has three young children; and he is the only breadwinner of his family. 15

It is, also, in evidence that it was the appellant who, as soon as he was arrested, confessed the commission of the offences in question and enabled, thus, the police to arrest the other accused and, also, to find most of the stolen jewels and money; and we feel that we should stress once again that in such cases sentences, even for serious offences, should not be such as to discourage people from making a clean breast of what they have done, when they are arrested by the police, and from helping the police to undo the consequences of their lawbreaking. 20

During the hearing of this appeal a new development occurred: The complainant, who is the sister of the wife of the appellant, has appeared before us and stated that she felt that it was her duty to inform us that she has forgiven the appellant for what he has done and that she does not have any complaint against him as regards the amounts of money which were not recovered. 25 30

Though, as has often been stated by this Court, it is the primary responsibility of trial Courts to assess sentences and the powers of this Court to interfere with sentences on appeal are limited within the boundaries laid down by certain well established principles, which we need not repeat now again since they have been expounded on many prior occasions, as in *Kollitiris v. The Police*, (1971) 2 C.L.R. 206, 207, *Kyprianou* 35

v. *The Republic*, (1971) 2 C.L.R. 158 and *Afxenti v. The Republic*, (1966) 2 C.L.R. 116, 118, we have, eventually, reached the conclusion, in the light of all the aforementioned considerations, that in the present case we have to interfere with the sentence
5 imposed by the trial Court; therefore, we have decided to reduce the sentence passed upon the appellant to one year's imprisonment, and we do hope that the appellant will do his best so that when he will come out of prison he will reform fully his way of life.

10 This appeal is allowed accordingly.

Appeal partly allowed.