

1982 March 10

[HADJIANASTASSIOU, A. LOIZOU AND MALACHTOS, JJ.]

ALKIS IACOVOU MAZARAKIS,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4037*).

Criminal Procedure—Appeal against sentence—Principles on which Court of Appeal acts—It will interfere with a sentence if the trial Court misdirected itself either on the facts or the law—Or allowed itself to be influenced by matter which should not affect sentence or if the sentence is manifestly excessive in the circumstances of the particular case.

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Criminal Law—Sentence—Burglary and stealing the sum of £140,—from a dwelling house—Seriousness of the offence—Need to protect the general public against dangers coming from persons like the appellant who has committed in all 14 offences—Sentence of five years' imprisonment not manifestly excessive, but a lenient one, notwithstanding that appellant admitted the offence to the police and returned part of the money.

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The appellant was sentenced to five years' imprisonment after pleading guilty on one count of the offence of burglary and stealing the sum of £140 from a dwelling house. The maximum sentence provided by the Law for this offence is 10 years' imprisonment. The appellant was 20 years of age, married with one child and was serving in the National Guard. He confessed his crime to the Police and returned part of the stolen money. In passing sentence the Assize Court took 13 other offences of the same nature into consideration.

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Upon appeal against sentence:

Held, that the Court of Appeal will only interfere with a sentence so imposed if it is made to appear from the record

that the trial Court misdirected itself either on the facts or the law or that the Court in considering the sentence allowed itself to be influenced by matter which should not affect the sentence or if it is made to appear that the sentence of the Court is manifestly excessive in the circumstances of the particular case; that one can hardly find any mitigating circumstances regarding the crimes committed by the appellant and this Court in imposing sentence must take into consideration the seriousness of the offences in each case as reflected by the punishment provided by the legislature in the relative sections of the Criminal Code; that, furthermore, due regard must be given, to the protection which the general public are entitled to under the law against the dangers coming from persons who do not care at all; that for these reasons, and fully aware that at the end the appellant admitted to the police and had returned part of the money, this Court has reached the view, not without any difficulty, that in the particular circumstances of this case not only the sentence is not manifestly excessive, but that, on the contrary, it is a lenient one if one takes into consideration that the appellant admitted that he had committed in all 14 offences; accordingly the appeal must fail.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Alkis Iacovou Mazarakis who was convicted on the 9th May, 1979 at the Assize Court of Nicosia (Criminal Case No. 10976/79) on one count of the offence of breaking and entering a dwelling house with intent to steal, contrary to sections 255, 291 and 292(a) of the Criminal Code, Cap. 154 and was sentenced by Papadopoulos, S.D.J., Nikitas and Laoutas, D.JJ. to five years' imprisonment.

T. Constantinides with C. Loizou, for the appellant.

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

HADJIANASTASSIOU J. gave the following judgment of the Court. This is an appeal against the sentence imposed on the appellant who was convicted on the 7th May, 1979, by the Assize Court of Nicosia (Cr. Case No. 10976/79) on one count of breaking and entering the dwelling house of Stavros Constantinou with intent to steal and stole therefrom the sum of £140.- in cash,

contrary to sections 255, 292 and 292(a) of the Criminal Code Cap. 154 respectively, and was sentenced by Papadopoulos, S.D.J. Nikitas and Laoutas D.JJ. to five years' imprisonment.

5 The appellant in the present case has pleaded guilty to the charge of burglary and stealing by breaking and entering a dwelling house with the intent to steal and stole the sum of £140.- in cash and was sentenced to five years' imprisonment. He now appeals against sentence on the ground that it is manifestly excessive. Indeed, the offence of breaking and entering
10 during night carries in accordance with section 292 a maximum penalty of ten years' imprisonment. The accused is 20 years of age married with one child and he has been enlisted in the army, and as he was unable to look after his family because he was only earning a small amount of money, his family was
15 looked after by his parents. On 12th March, 1979, the appellant, who was absent from his camp, was declared as being deserter soldier by the appropriate military authority. The complainant Stavros Constantinou of Nicosia is an officer in the police force with the rank of a Sub-inspector and is attached
20 to K.Y.P., is residing with his family in his own flat which is known as the Karantokis flats. On the 29th March, 1979, after finishing his work he went to his flat and at 10.00 p.m. he went to bed leaving in the pocket of his coat the sum of £140.- and also his police identity card. On the following morning he
25 woke up at 7.00 a.m. and having dressed up he visited Makedonitissa in order to pay the person who was building for him a house. Whilst there he realized that the said sum of money, including his police identity card, was missing. He referred the matter to a sergeant who happened to be in the block of
30 flats investigating the complaints of a number of persons residing there. On 30th March, 1979, the sergeant in question met the accused at 13.15 hours in a cafe, and because he had certain suspicions as to whether he was one of the culprits, he asked him to accompany him to C.I.D. of Nicosia for inter-
35 rogation. The accused during the interrogation with regard to the breaking and entering of certain flats in the building of Karantokis, told the sergeant the following: "There is no reason to deceive you I have committed all the breakings and enterings and let's go to the hotel to give you
40 the money". On the same day at 13.45 hours the accused took sergeant 329 to his room in the hotel "REGINA" where

he was staying and from the cupboard he took the sum of £140.- which was in notes of £10.- and handed the money to the sergeant who having warned him as to the law, the accused replied: "These money are from those which I took last night". In the light of this statement the sergeant having arrested him took him to C.I.D. of Nicosia and he handed him to G. Philippou, a Sub-inspector, together with the personal things and the seized amount of money. Later on between the 14.00 and 15.00 hours of 30th March, 1979, the accused made a voluntary statement to Sub-inspector Philippou and admitted inter alia that he had committed the breaking and entering in the house of Sub-inspector Stavros Constantinou. Furthermore, in his statement the accused admitted that during midnight of the 29th March, 1979, he went to the block of flats and from the dormer window he was forcing and opening the windows of the kitchens and was entering into various flats and was stealing various amounts of money and particularly the sum of £140.- from the pocket of the complainant. At 15.20 hours of the same day the accused was arrested by Sub-inspector Philippou, who had drawn his attention to the law and had also explained to him the reasons of his arrest, but the accused did not give any reply.

The Assize Court of Nicosia in imposing a sentence of five years' imprisonment took another 13 offences of the same nature into consideration which the accused admitted.

On appeal counsel appearing for the accused submitted that the sentence was manifestly excessive once he had admitted frankly all the offences against him and invited the Court, in view of his age, to show leniency to him. There is no doubt that the behaviour of the appellant in this case was appalling and the question is whether this Court in view of the age of the appellant should interfere in the present case. Time and again this Court had said that the Court of Appeal will only interfere with a sentence so imposed if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law; or that the Court in considering the sentence allowed itself to be influenced by matter which should not affect the sentence; or if it is made to appear that the sentence of the Court is manifestly excessive in the circumstances of the

particular case. There is no doubt that the Assize Court had in mind the young age of the appellant and took also into consideration the report made by the Welfare Office. As it has been said earlier the appellant had committed a great
5 number of offences and we have no doubt that all these offences make the case a very serious case for the appellant. Indeed, one can hardly find any mitigating circumstances regarding the crimes committed by him and this Court in imposing sentence must take into consideration the seriousness of the offences
10 in each case as reflected by the punishment provided by the legislature in the relative sections of the Criminal Code. Furthermore, we feel we must give due regard to the protection which the general public are entitled to under the law against the dangers coming from persons who do not care at all. For
15 these reasons, and fully aware that at the end the appellant admitted to the police and had returned part of the money, we have reached the view, not without any difficulty, that in the particular circumstances of this case not only the sentence is not manifestly excessive, but that, on the contrary, it is a lenient
20 one if one takes into consideration that the appellant admitted that he had committed in all 14 offences.

For these reasons the appeal is dismissed once, we repeat, the punishment imposed was not under the circumstances manifestly excessive.

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Appeal dismissed