1980 March 11

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

MARIOS TEREZIDES AND ANOTHER,

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals Nos.* 4044-45).

Criminal Procedure—Appeal against sentence—Principles on which Court of Appeal interferes with a sentence imposed by a trial Court.

Criminal Law—Sentence—Concurrent sentences of four years' imprisonment for thirty shop-breaking counts involving theft of money and other articles of a total value of £4,250*—Appellants collaborating with Police and handing over part of the stolen goods and money—Both aged* 20 *and had received lenient sentences in the past—Need to demonstrate that professional shop-breaking cannot be tolerated—Sentence, though it may be on the high side, not manifestly excessive.*

The appellants were convicted by an Assize Court for 30 shop-breaking counts involving theft of money and other articles of a total value of £4,250, committed between May-February, 1979, and were sentenced to concurrent sentences of four years' imprisonment on each of the 30 counts. After their arrest they collaborated with the police and handed over part of the stolen goods and money as well as the shop-breaking implements. The unrestored money amounts to £363 and the unreturned goods are worth £500. Both appellants were aged 20. Appellant 1 had previous convictions for which he had been placed on probation, sent to Lambousa School and imprisoned but neither of these sentences helped him to mend his ways and face up to his responsibilities. He was married with one child but he showed little if any interest to his family. Appelant 2 had, also, been placed on probation for a period of time and had spent a short interval of time in prison.

Upon appeal against sentence:

Held, that the Court of Appeal will only interfere with a sentence so imposed by the trial Court 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 sentence allowed itself to be influenced by matter which should not affect the sentence, or if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case; that this Court is in agreement with the Assize Court that the pattern of shop breaking in these two cases makes it necessary for it, also, to demonstrate by the sentence inflicted on the two appellants that professional shop breaking of that magnitude will not be tolerated any longer; that in the light of these facts and circumstances, and fully aware that the sentence imposed on the appellants may be on the high side, nevertheless, this Court does not think that there is room for interfering with the decision of the Assize Court, and it would dismiss the appeal once it thinks that the sentence is not manifestly excessive; accordingly the appeals must fail.

Appeals dismissed.

Cases referred to:

Socratous v. *The Republic* (1970) 2 C.L.R. 181 at p. 183;

Mina and Another v. *The Police* (1971) 2 C.L.R. 167 at pp. 170–171;

Iroas v. *The Republic* (1966) 2 C.L.R. 116 at p. 118.

Appeals against sentence.

Appeals against sentence by Marios Terezides and Another who were convicted on the 30th May, 1979 at the Assize Court of Larnaca (Criminal Case No. 2620/79) on thirty counts of the offence of shop-breaking and theft contrary to sections 291, 294(a), 255 and 20 of the Criminal Code, Cap. 154 and were sentenced by Pikis, P.D.C., Pitsillides, S.D.J. and Constantinides, D.J. to four years' imprisonment on each of the thirty counts, the sentences to run concurrently.

A. Indianos, for the appellants.

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

HADJIANASTASSIOU J. gave the following judgment of the Court. This is an appeal by both accused in Criminal Appeals

Nos. 4044 and 4045, who were convicted by the Assize Court of Larnaca for 30 shop breaking counts involving the theft of money and other articles of a total value of £4,250, committed at dates between May–February, 1979. Both accused were
5 sentenced to 4 years' imprisonment on each of the 30 counts and the sentences to run concurrently. The appeal was made by both appellants from the Central Prison on the ground that the sentences were manifestly excessive.

On the night of 5th–6th February, 1979, there was an orgy
10 of shop breaking by the two accused, and the police were mobilized in search of the culprits. Later on that day, accused 1 and 2 were arrested by the police and shortly afterwards they made confessions, realizing, to repeat their own words, that the game was up for them. Thereafter they collaborated
15 with the police and handed over part of the stolen goods and money as well as the shop breaking implements. The unrestored money amounts to £363, whereas the unreturned goods are worth £500, i.e. a quantity of stolen cigarettes.

There is no doubt that notwithstanding their youth, it is
20 manifest that both accused have systematically engaged in stealing property from almost every part of the island. It appears further that the record of both accused and their past personal history, as revealed in the social investigation reports which the Assize Court had before them is not encouraging.
25 Speaking of accused 1, neither probation nor the Lambousa Reform School or a recent term of imprisonment helped mend his ways and face up to his responsibilities. He is married and the father of a child, but he shows little if any interest in his family. The case of accused 2 is not much better, and like
30 accused 1 he was placed on probation for a period of time and also he has recently spent a short interval of time in prison. Both accused 1 and 2 are aged 20.

The Assize Court, having taken into consideration the totality of the facts before them including whatever was advanced by
35 learned counsel of the accused in mitigation on their behalf, had this to say:-

"In passing sentence we have in mind that the offences committed by the accused belong broadly to a category of offences where a high element of individualization is possi-

ble in sentencing. (See *Philippou and Another v. The Republic* (1976) 7 J.S.C. 1157.) However the pattern of shop breaking in this case, its frequency and the total lack of scruples on the part of accused 1 and 2 make it necessary for this Court to demonstrate by the sentence about to be passed that professional shopbreaking will not be tolerated nor criminal adventurism at its worst. And in the case of accused 1 and 2 there is little alternative but to impose a medium to a long term of imprisonment having regard to their failure to respond to other modes of sentencing in the past and the danger they pose to society. On the other hand the stage has not come for the maximum sentence to be imposed as we feel mostly having regard to their age that all hope of reforming them has not been lost; and indeed we hope that during their stay in prison they will make a conscious effort to reflect on their ways and try to correct them and come out of prison reformed men. (See *Kakouris v. The Police* (1972) 2 C.L.R. 427).

Having taken into consideration the charges in the cases above mentioned we sentence each one, accused 1 and 2, to a sentence of 4 years' imprisonment on each of the thirty counts. The sentences will run concurrently."

On appeal, Mr. Indianos, counsel for both appellants, argued with force that the sentence was manifestly excessive and that the Assize Court discriminated in the two cases because appellant 2 was not given a chance and deserved more sympathy to put forward his case. Counsel relied on *Stylianos Socratous v. The Republic* (1970) 2 C.L.R. 181 at p. 183 and also on *Minas Mina and Another v. The Police* (1971) 2 C.L.R. 167 at pp. 170-171.

Time and again it was said that the Court of Appeal will only interfere with a sentence so imposed by the trial Court 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 sentence allowed itself to be influenced by matter which should not affect the sentence; or if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case. (See *Michael Afxenti alias "Iroas" v. The Republic* (1966) 2 C.L.R. 116 at p. 118.)

In *Minas Mina and Another v. The Police* (1971) 2 C.L.R. 167, the Court of Appeal, having indicated that this was indeed a very serious case, had this to say at pp. 170-171:-

"Though, as a Court of Appeal, we would not be prepared to substitute our own assessment as to what is the right punishment in a criminal case in the place of the assessment of a trial Judge, because, as it has often been stressed, it is for the trial Courts to assess sentence in the light of the circumstances of each particular case, and we can only interfere with the sentence imposed by a trial Court if there exist any of the well-established reasons which have been laid down as entitling us to do so, in the present case, having duly considered what has been ably submitted by learned counsel for the Appellants, we have come to the conclusion that the trial Court appears to have been so impressed by the severity of the offences concerned, and by the need to protect society against high-handed conduct of this nature, that no sufficient weight was given to the personal circumstances of the Appellants and the conditions under which such offences were committed, including, in particular, the fact that the Appellants were at the time labouring under a suspicion which filled them with great indignation.

It seems to us, also, that the learned trial Judge, having taken 'into consideration...... as guidance' the cases of *Paraschos* v. *The Police* (1963) 1 C.L.R. 83, *Agathocleous* v. *The Police* (1965) 2 C.L.R. 119, and *Psaras* v. *The Police* (1968) 2 C.L.R. 8, was unduly influenced by them though the facts in those cases were entirely different from those in the present case.

We are of the opinion that the objects of protecting society against conduct of this nature, through deterring others from resorting to it in similar circumstances, as well as of making the Appellants realize once and for all that they cannot take the law into their own hands, whatever their grievances may be, and of punishing them for what they did, could be amply achieved by sentences of imprisonment less severe than those imposed on the Appellants, which, in our view, are manifestly excessive and wrong in principle......"

In *Stylianos Socratous v. The Republic* (1970) 2 C.L.R. 181, Vassiliades, P., having stated at p. 183 that sentencing in these circumstances was not an easy matter, added the following at p. 183:-

> "Without going into detail, we propose following the line settled in a number of cases where this Court was dealing with appeals against sentence. It is well settled that the primary responsibility for measuring sentence rests on the trial Court; and that the Court of Appeal will not interfere with a sentence, unless the appellant can show that there are sufficient reasons for such intervention. (See *Michael Kougkas* v. *The Police* (1968) 2 C.L.R. 209 at p. 212; *Hapsides* v. *The Police* (1969) 2 C.L.R. 64 at p. 66). It has also been said that sentencing is a delicate and difficult function of the Court charged with that responsibility (see *Anthony Castelow and Another* v. *The Police* (reported in this Part at p. 141 ante; at p. 148); *Michael Achilleos* v. *The Police* (reported in this part at p. 150 ante; at p. 153)). It cannot be said in this case that the Military Court did not have good reasons for imposing on the appellant a severer sentence than that imposed in the District Court. The same offence committed by a person in military service calls for a severer sentence than if committed by a young civilian; moreover, the Military Court made the sentence concurrent to that passed a few days earlier by the District Court.
>
> On the other hand, the young appellant before us may feel that he has not had equal treatment with his other two co-accused, one of whom was considerably older than the appellant. He may well feel that his being in the Army when committing the shopbreaking for which he was sentenced by the Military Court, was a disadvantage to him, which made his sentence six months longer than that of his co-accused. Taking all these matters into consideration, including the social and medical reports regarding the appellant, we came to the conclusion, not without considerable difficulty and hesitation, that this appeal should be partly allowed and the sentence of the Military Court be reduced so as to run for the same period as the sentence of the District Court. The sentence to run from conviction."

Having considered very carefully the authorities quoted, we find ourselves in agreement with the Assize Court that the pattern of shop breaking in these two cases makes it necessary for this Court also to demonstrate by the sentence inflicted on 5 the two accused that professional shopbreaking of that magnitude will not be tolerated any longer.

In the light of these facts and circumstances, and fully aware that the sentence imposed on accused 1 and 2 may be on the high side, nevertheless, we do not think that there is room for inter- 10 fering with the decisions of the Assize Court, and we would dismiss the appeal once we think it is not manifestly excessive.

Appeals dismissed, the sentence to run from the date of conviction.

Appeals dismissed.