

1984 February 16

[A LOIZOU MALACHTOS AND SAVVIDIS JJ]

MARIOS NICOU APOSTOLOU

*Appellant*

1

THE POLICE

*Respondents*

(Criminal Appeal No 4490)

5 *Criminal Law—Sentence—Having in his possession by night without lawful excuse instruments of house-breaking conspiracy to commit a felony and stealing—Need to meet offences relating to property which is left unattended with severity—Appellant having a previous conviction for stealing—Sentence of 7 months imprisonment—Upheld*

10 *Criminal Law—Sentence—Evaluation of, within the ambit of the trial Judge—Court of appeal interferes if sentence wrong in principle or either manifestly excessive or manifestly inadequate*

15 The appellant pleaded guilty to the offences of having in his possession by night without lawful excuse instruments of house-breaking, contrary to section 296 (c)(1) and to the offence of conspiracy to commit a felony, contrary to section 371 of the Criminal Code Cap 154 and was sentenced to seven months imprisonment. In passing sentence the trial Judge took into consideration another case which was pending against the appellant and in which he was charged of stealing a motorcycle. The appellant had a previous conviction of stealing in which he was placed on probation for 18 months, and the above offences were committed whilst he was on probation. When arrested in respect of the first two offences he admitted that he intended to steal various spare parts from cars parked outside Makarios Stadium in order to sell them.

20 *Upon appeal against sentence*

25 *Held, that in the circumstances of this case and guided by the*

principle that the evaluation of the appropriate sentence is in the first place within the ambit of the trial Judge and that this Court only interferes if such a decision is wrong in principle or either manifestly excessive or manifestly inadequate, this Court has come to the conclusion that this appeal should be dismissed as there is no reason to interfere with the sentence imposed. 5

*Held*, further, that offences of this nature which relate to property which by their very nature are left unattended in open spaces and the detection of which is difficult should really be dealt with adequate severity so that their commission will be discouraged. 10

*Appeal dismissed.*

#### **Appeal against sentence.**

Appeal against sentence by Marios Nicou Apostolou who was convicted on the 21st December, 1983 at the District Court of Nicosia (Criminal Case No. 14813/83) on one count of the offence of having in his possession by night instruments for house-breaking contrary to section 296(c)(i) and on one count of conspiracy to commit a felony contrary to section 371 of the Criminal Code, Cap. 154 and was sentenced by Laoutas, S.D.J. to seven months' imprisonment. 15 20

Appellant appeared in person.

*A. Vladimirov*, for the respondents.

A. LOIZOU, J. gave the following judgment of the Court. The appellant was found guilty on his own plea on two charges, one of having in his possession by night without lawful excuse instruments of house-breaking, contrary to section 296(c)(i) and one of conspiracy to commit a felony contrary to section 371 of the Criminal Code, Cap. 154. 25 30

On the 7th September, 1983, at about 9.10 p.m., Acting Police Sergeant Charalambous whilst on duty in the parking space outside Makarios Stadium, saw the appellant and another person, ex accused 2, jumping over the surrounding wall of the Stadium on to the parking space, where motor-cars and motor-cycles had been parked by the spectators of a match that was taking place at the time. He stopped them and he found the appellant to be carrying a bag in which there 35

were instruments of house-breaking, namely, one screw-driver, one spanner, one pair of gloves and one reflecting lamp. When asked what he was doing he gave the explanation that he was going for a walk but when further questioned, he admitted that he intended to steal various spare parts in order to sell them. The disposal of the stolen items was easy to be done as the appellant was an apprentice mechanic for motorcycles at the garage of Yamaha.

The family and personal circumstances of the appellant appear in a Welfare Officer's report made available to the Court. He left the Secondary School at the fourth class and worked for some time before he enlisted in the National Guard from which he was released on medical grounds after 21 months of service.

He has one previous conviction of stealing on the 31st May, 1983, when he was placed on probation for 18 months. It was whilst so on probation and in fact when he appeared, according to the Welfare Officer's report, to be co-operative that the the subject offences were committed. The learned trial Judge in imposing the sentence of imprisonment of seven months stressed the seriousness of the offence and, as he said, after taking into consideration the personal circumstances of the appellant.

The notice of appeal was prepared by the appellant in person whilst in prison and the only ground given therein is that the sentence is manifestly excessive.

In the circumstances of this case and guided by the principle that the evaluation of the appropriate sentence is in the first place within the ambit of trial Judges and that this Court only interferes if such a decision is wrong in principle or either manifestly excessive or manifestly inadequate, we have come to the conclusion that this appeal should be dismissed as there is no reason to interfere with the sentence imposed. More so as we should not loose sight of the fact that another criminal offence was taken into consideration, though regrettably the particulars of that other offence were not recorded in the minutes of the Court. A perusal, however, of the relevant file of Case No. 14812/83 shows that the offence which the appellant so admitted and asked to be taken into consideration was one

of stealing contrary to sections 255 and 262 of the Criminal Code. Its particulars were that the appellant on a date unknown between June and August 1982, at Ayia Napa in the district of Famagusta, stole a motorcycle of the make Yamaha of a value of C£42.-, property of a person unknown. 5

No doubt offences of this nature which relate to property which by their very nature are left unattended in open spaces and the detection of which is difficult should really be dealt with adequate severity so that their commission will be discouraged. 10

In the result the appeal is dismissed.

*Appeal dismissed.*