

1984 September 12

[DEMETRIADES, SAVVIDES AND PIKIS, JJ.]

CHRISTODOULOS CHARALAMBOUS TTOOULAS,  
*Appellant.*

v.

THE POLICE,  
*Respondents.*

(*Criminal Appeal No. 4567*).

5 *Criminal Law—Sentence—Carrying a knife outside the curtilage of his house—Section 82 of the Criminal Code, Cap. 154—Age of appellant (74), his state of health and his clean record—Sentence of 3 months’ imprisonment—Excessive—Reduced to 45 days’ imprisonment.*

*Constitutional Law—Punishments—Mandatory or minimum sentence provided by section 82(2) of the Criminal Code, Cap. 154—Should be construed and applied subject to the provisions of Article 12:3 of the Constitution.*

10 The appellant was found guilty of (a) Carrying a knife outside the curtilage of his house, contrary to section 82 of the Criminal Code, Cap. 154; (b) Possession of a knife while drunk, contrary to section 94(2), Cap. 154, and (c) Behaving in a manner likely to cause a breach of peace, contrary to section 188(d) of the  
15 Criminal Code, Cap. 154, and was sentenced to concurrent terms of imprisonment of 3 months, 45 days and 15 days respectively. He was aged 74 and was burdened with only one previous conviction for a minor offence, public insult recorded four years earlier. His very appearance and speech left the  
20 impression of an aged man with his faculties mostly impaired.

*Upon appeal against sentence:*

25 *Held*, that the sentence of three months’ imprisonment was excessive in view of the age of the appellant, his state of health and not least his clean record; that as the appellant has already spent 45 days in prison the term of imprisonment must be

reduced in a manner making possible the release of appellant as from to-day.

*Held*, further, that the provisions of section 82(2), Cap. 154, as well as those of every other law ordaining a mandatory or a minimum sentence must be construed and applied subject to the provisions of Article 12.3 of the Constitution prohibiting the imposition of a punishment disproportionate to the gravity of the offence; and that if the facts of the case and circumstances of the accused so warrant, the Court may make any order it considers appropriate.

*Appeal allowed. Sentence reduced.*

**Cases referred to:**

- Dourmouh v. Police* (1963) 1 C.L.R. 39;  
*District Officer Nicosia v. Hadji Yiannis*, 1 R.S.C.C. 79;  
*District Officer Famagusta v. Antoni*, 1 R.S.C.C. 84;  
*Superintendent of Gendarmerie, Lefka v. Eglezos*, 3 R.S.C.C. 7;  
*District Officer Nicosia v. Palis*, 3 R.S.C.C. 27;  
*District Officer Famagusta v. Themistokli and Another*, 3 R.S.C.C. 47;  
*Nicosia Police v. Ahmed*, 3 R.S.C.C. 50;  
*District Officer Kyrenia v. Salih*, 3 R.S.C.C. 69.

**Appeal against conviction and sentence.**

Appeal against conviction and sentence by Christodoulos Charalambous Ttooulas who was convicted on the 30th July, 1984 at the District Court of Paphos (Criminal Case No. 1130/84) on one count of the offence of carrying a knife outside the curtilage of his house contrary to section 82 of the Criminal Code, Cap. 154, on one count of the offence of possessing a knife while drunk contrary to section 94(2) of the Criminal Code, Cap. 154 and on one count of the offence of behaving in a manner likely to cause a breach of the peace contrary to section 188(d) of the Criminal Code, Cap. 154 and was sentenced to concurrent terms of imprisonment of 3 months, 45 days and 15 days respectively.

Appellant appeared in person.  
*A. M. Angelides*, Senior Counsel of the Republic, for the respondents.

DEMETRIADES J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: The appellant was found guilty of (a) Carrying a knife outside the curtilage of his house, contrary to section 82 of the Criminal Code, Cap. 154; (b) Possession of a knife while drunk, contrary to section 94(2), Cap. 154, and (c) Behaving in a manner likely to cause a breach of peace, contrary to section 188(d) of the Criminal Code, Cap. 154, and was sentenced to concurrent terms of imprisonment of three months, 45 days and 15 days respectively.

As the facts found by the trial Court establish, the offences were committed at a time when the appellant had little or no control over himself on account of the consumption of alcohol. The offences were committed in the course of an altercation and subsequent fight between the appellant and some of the inmates of a cafe at Philousa village in the Paphos district.

Appellant lodged this appeal from the Central Prisons, evidently unaided by legal advice. By his appeal he put in issue both his conviction and sentence. And he appeared on his own before us. His very appearances and speech left the impression of an aged man with his faculties mostly impaired. Nothing that he said could conceivably justify interference with the verdict of the trial Court. On the other hand, the sentence imposed appears to be excessive in view of his personal circumstances and virtually unblemished record at the age of 74. He is burdened with only one previous conviction for a minor offence, namely, public insult recorded four years earlier.

In face of the personal circumstances of the appellant and signs of deterioration of his health, counsel for the Attorney-General inclined to the view that the overall sentence imposed, an effective sentence of three months' imprisonment, was excessive. He drew our attention to the case of *Hassan Dourmouh v. The Police* (1963) 1 C.L.R. 39, where the Supreme Court reduced a sentence of six months to 21 day's imprisonment in connection with the unlawful carrying of a knife on grounds of personal hardship to the appellant. Therefore, he submitted, there is room for this Court to interfere with the sentence imposed that appears to be excessive in the circumstances of the case.

Some passages in the judgment of the trial Judge suggest he did not properly appreciate the width of his discretion in meting out a sentence befitting the facts of the case and circumstances of the accused. It must be noted that the provisions of section 82(2), Cap. 154, as well as those of every other law ordaining a mandatory or a minimum sentence must, as repeatedly decided\*, be construed and applied subject to the provisions of Article 12.3 of the Constitution prohibiting the imposition of a punishment disproportionate to the gravity of the offence. In the judgment of the trial Court relevant to sentence, the provisions of section 82(2), Cap. 154, with regard to a minimum sentence are analysed without reference to Article 12.3 of the Constitution.

The magnitude of the discretion of a Court of Law to impose upon conviction for an offence under section 82(2), Cap. 154, any sentence merited by the sum total of the facts of the case was specifically acknowledged in the case of *Dourmoush* (supra). If the facts of the case and circumstances of the accused so warrant, the Court may, as stressed in the above case, make any order it considers appropriate.

Having given due consideration to every aspect of the case, we are of opinion the sentence of three months' imprisonment was excessive in view of the age of the appellant, his state of health and not least his clean record. The appellant has already spent 45 days in prison. We feel that is sufficient punishment. We need not debate whether a sentence, other than imprisonment, might be more appropriate in the circumstances of this case. The best we can do is to order the reduction of the term of imprisonment in a manner making possible the release of appellant as from to-day and we so order.

Order accordingly.

*Appeal allowed. Sentence reduced.*

\* See, inter alia, *District Officer Nicosia v. Georghios Hadji Yiannis*, 1 R.S.C.C. 79; *District Officer Famagusta v. Demetra Panayiotou Antoni*, 1 R.S.C.C. 84; *Superintendent of Gendarmerie, Lefka v. Christodoulos Antoni Hji Yianni*, 2 R.S.C.C. 21; *Morphou Gendarmerie v. Andreas Demetri Eglezos*, 3 R.S.C.C. 7; *District Officer Nicosia v. Michael Ktori Palis*, 3 R.S.C.C. 27; *District Officer Famagusta v. Michael Themistoeli & Another*, 3 R.S.C.C. 47; *Nicosia Police v. Djemal Ahmed*, 3 R.S.C.C. 50; *District Officer Kyrenia v. Adem Salih*, 3 R.S.C.C. 69.