

1985 September 16

[A. LOIZOU, STYLIANIDES AND PIKIS, JJ.]

GEORGHIOS MATTHEOU PRAKKI,

Appellant,

v.

THE POLICE,

*Respondents.**(Criminal Appeal No. 4632).*

Sentence—Pursuing game during close season contrary to ss. 2, 28 (1) (2), 33 and 35 of the Game and Wild Birds (Protection and Propagation) Law 39/1974—£75 fine and prohibition to carry a firearm for two years—First offender—Neither manifestly excessive nor wrong in principle.

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The appellant, a farmer, married with eight children, an owner of a duly registered shotgun went on the 3.3. 1985 at Pano Lefkara for the purpose of pursuing “jikles” for which he had a special permit. The shooting of partridges was, however, prohibited during this period. Notwithstanding a call by other persons in the vicinity not to shoot at a partridge flying towards appellant’s direction, he shot at it and killed it. One of the said other persons was a police constable. He cautioned the appellant who replied that he did not shoot at the partridge. The appellant is a first offender.

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The trial Court sentenced the appellant to a fine of £75; he was also forbidden to carry a firearm for a period of two years. The appellant appealed against this sentence.

Held, dismissing the appeal:

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(1) The sentence imposed, viewed in the realities of to-day, is neither manifestly excessive nor unreasonable, and leaves no room for this Court to interfere.

(2) In fact, there may be a time when Courts must

seriously contemplate also, in appropriate cases, the imposition of even sentences of imprisonment; but that is a matter to be considered in the circumstances of each case, taking into account in particular, the prevalence of such offences, the extent of the wrong that is to be remedied and other material considerations.

Appeal dismissed.

Cases referred to:

Antoniades and Others v. The Police, 1964 C.L.R. 139;

10 *Andrea and Others v. The Police* (1966) 2 C.L.R. 71;

Demetriou v. The Police (1966) 2 C.L.R. 99.

Appeal against sentence.

Appeal against sentence by Georghios Mattheou Prakki who was convicted on the 8th May, 1985 at the District Court of Larnaca (Criminal Case No. 4748/85) on one count of the offence of pursuing game during a closed season contrary to sections 2, 28 (1) (2), 33 and 35 of the Games and Wild Birds (Protection and Propagation) Law, 1974 (Law No. 39/74) and was sentenced by G. Nicolaou (D. J.) to pay £75.- fine and was forbidden to carry a firearm for a period of 2 years.

A. Koumi, for the appellant.

A. Vassiliades, for the respondents.

A. LOIZOU J. gave the following judgment of the Court.
 25 The appellant, who was found guilty on his own plea to a charge of pursuing game during closed season contrary to ss. 2, 28 (1), (2), 33 and 35 of the Game and Wild Birds (Protection and Propagation) Law 1974, (Law No. 39 of 1974), was sentenced by the District Court of
 30 Larnaca to a fine of £75; also he was forbidden to carry a firearm for a period of 2 years beginning on 8th May, 1975.

He appealed against the sentence imposed on the ground that same is manifestly excessive and unjustified in the
 35 circumstances.

The appellant is a farmer, 44 years of age, married with eight children. He comes from Liopetri village and is a first offender. He has been the owner of a duly registered shotgun under Registration No. L 7607 and he had a valid permit for pursuing game for the period 1984-1985.

On the 3rd March, 1985, he was at Pano Lefkara at "Elioti" locality, for the purpose of pursuing "jikkles" (wild birds) for which he had a special permit; the shooting of partridges was, however, prohibited during that period. At the same locality there were other people, three of whom were positioned next to the appellant at a distance of 50-60 meters from each other. At about 8.30 a.m. these three witnesses observed a partridge flying overhead in the direction of the appellant. They called out to him not to shoot at it, but the appellant aimed and fired at it when it came close to him. It fell dead in the prohibited area. The witnesses went and took it. One of them who was a police constable, disclosed his identity to the appellant, cautioned him, and the answer of the appellant was that he did not shoot at the partridge.

Counsel for the appellant argued that the sentence imposed was manifestly excessive in the circumstances, and invited this Court to interfere and reduce same. In support of his contentions he referred us to some decisions of this Court that date back to 1964 and 1966, namely, *Stelios Yiangou Antoniadis & Others v. The Police*, 1964 C.L.R. 139; *Archimides Andrea and Others v. The Police*, (1966) 2 C.L.R. 71; and *Savvas Demetriou v. The Police*, (1966) 2 C.L.R. 99.

In the first one, the appellant was convicted by the District Court of Limassol on the following three counts:

- (1) carrying a firearm (a sporting gun) without a certificate of registration;
- (2) carrying the same gun without a firearms licence; and
- (3) pursuing game without a game licence during an open season.

He was sentenced to pay a total amount of £20 fine on all three counts, £6.930 mils costs, and he was further prohibited from carrying a gun for a period of 18th months, and the gun in question—claimed to be worth over £100—
5 was forfeited. On appeal the forfeiture of the gun was set aside.

In the second case, the appellants pleaded guilty to breaking the conditions of a special permit issued to them by the District Officer of Paphos under the Game and
10 Wild Birds Law, Cap. 65, and were sentenced to a fine of £5 each and prohibited from carrying a gun for a period of one year. They had broken the conditions of their permit by pursuing game during a closed season outside the areas specified in such permit. Their appeals were dis-
15 missed.

In the third case, the appellant appealed against the sentence of disqualification to possess a gun for three years, imposed on him by the District Court of Nicosia when he pleaded guilty to a charge of carrying a firearm, a
20 shotgun, during a closed season. He was also fined £5 and bound over in the sum of £50 for two years, but did not complain against that part of the sentence. The appeal was allowed on the ground that the sentence of disqualifi-
25 cation imposed on him was wrong in principle and manifestly excessive in as much as it was found by the Appeal Court that it was beyond doubt that the appellant, by carrying his shot gun contrary to the provisions of the law was not intending in the least to pursue game or wild birds, but he did carry it with him when he left home for safe-
30 keeping in view of the fact that on a previous occasion when he had quarrelled with his wife, his wife had thrown the shotgun into a well.

Having referred to these cases, we are unable to agree that they justify reduction of the sentence imposed. If any-
35 thing, they can only have a contrary effect, in the sense that it should have become more widely accepted that the protection of the wild life of the island which is rapidly nearing extinction, has to be more effective, and that the Courts must impose such sentences that would really have
40 a deterrent effect.

We find no merit in this appeal whatsoever. The sentence imposed, viewed in the realities of today, is neither manifestly excessive, nor unreasonable, and leaves no room for this Court to interfere; in fact, there may be a time when Courts must seriously contemplate also, in appropriate cases, the imposition of even sentences of imprisonment; but that is a matter to be considered in the circumstances of each case, taking account, in particular, the prevalence of such offences, the extent of the wrong that is to be remedied, and other material considerations.

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Appeal dismissed.