1985 March 22

[A. LOIZOU, DEMETRIADES, KOURRIS, JJ.]

THEOKLITOS ALEXANDROU,

Appellant,

v.

DIRECTOR OF CUSTOMS AND EXCISE,

Respondents.

(Criminal Appeal No. 4608).

Criminal Procedure—Sentence—Multiple offences—Component parts of the heavier offence forming part and parcel of other offences of less gravity—Correct course is to record convictions on the lesser offences—But not to pass sentence thereon in order not to offend the principle that a person should not be punished twice for the same act or omission.

Customs and Excise Laws, 1967-1977—Fraudulent possession of goods for which duty had not been paid—Sentence of nine months' imprisonment—Said goods of a value of £10,000, forfeited by the Customs Authorities—Appellant a first offender, a displaced person and indebted in the sum of £20,000—Has genuinely repented and shown remorse —No proper weight given to the forfeiture of the goods—Notwithstanding that defrauding the revenue is a serious offence and even in cases of first offenders a sentence of imprisonment may properly be imposed, sentence excessive —Reduced to four months' imprisonment.

The appellant pleaded quilty to the offences of faudulent evasion of paying duty (count 3) and of fraudulent possession of goods for which duty had not been paid (count 8) and was sentenced to nine months' imprisonment on each count the sentences to run concurrently.

The particular of the offences related to the fraudulent importation and possession of 511 video casettes of a value of £18,181.60 cent in respect of which no import duty and special refugee charge were paid amounting to

£7,971.60 cent. The Customs authorities forfeited the casettes.

The appellant was a poor family man without previous convictions, displaced from Famagusta and indebted to a Bank in the sum of £20,000 which appeared to have been used for his reactivation after his displacement. He made a clean breast of everything on the first day of his arrest by the Police.

Upon appeal against sentence:

Held, that though this Court subscribes fully to the principle that defrauding the revenue is a serious offence and even in cases of first offenders a trial Court, in certain cases, may very properly impose a sentence of imprisonment, bearing in mind all the circumstances of this case as well as those relating in particular to the person, the family and financial condition of the appellant and his whole conduct of making a clean breast of it at such a stage of police investigations as to render his conduct indicative of his repentance and genuine remorse there is room justifying the reduction of the sentence of imprisonment imposed inasmuch as there appears not to have been given the proper weight to the forfeiture of the goods whose market value was in the region of £10,000, a substantially big amount not only for a man of the financial position of the appellant but for any person at that; accordingly the sentence of imprisonment is reduced to one of four months on count 8 and no sentence is imposed on count 3.

Appeal allowed.

Per curiam:

Where an accused person is found guilty of several offences and the component parts of the heavier offence form part and parcel of the other offences of less gravity, the correct course is to record convictions on the lesser or subsidiary ones but not to pass sentence on them otherwise the principle that a person should not be punished twice for the same act or omission, would be offended.

Cases referred to:

Pefkos and Others v. *Republic*, 1961 C.L.R. 340;

Attorney-General of the Republic v. *Theofanous* (1965) 2 C.L.R. 26.

Appeal against sentence.

Appeal against sentence by Theoklitos Alexandrou who was convicted on the 17th December, 1984 at the District Court of Larnaca (Criminal Case No. 5330/84) on one count of the offence of fraudulent evasion of paying duty on imported goods contrary to sections 191(1)(b) and 192 (2) of the Customs and Excise Laws, 1967-1977 and sections 4 and 5 of the Special Refugee Charge (Imported Goods) Laws, 1977-1984 and on one count of the offence of fraudulent possession of goods for which duty had not been paid contrary to sections 191(1)(a), 192(2) and to sections 4 and 5 of the above laws and was sentenced by G. Nicolaou, D.J. to concurrent terms of nine months' imprisonment on each count.

K. Talarides with *K. Saveriades*, for the appellant.

M. Photiou, for the respondent.

A. Loizou J. gave the following judgment of the Court. In this appeal which was originally directed against both conviction and sentence, that against conviction was abandoned and so the only issue before us is whether the sentence imposed on the appellant is manifestly excessive as claimed or not.

The appellant had been found guilty on his own plea to two counts. The first, which was count 3 on the charge, of fraudulent evasion of paying duty on imported goods contrary to sections 191 (1) (b) and 192 (2) of the Customs and Excise Laws, 1967 to 1977 and sections 4 and 5 of the Special Refugee Charge (Imported Goods) Laws, 1977 to 1984 and the second which was count 8 thereof, for fraudulent possession of goods for which duty had not been paid, contrary to sections 191(1)(a) to 192(2) and also contrary to sections 4 and 5 of the aforementioned laws.

The particulars of the offences as set out in the charge relate in effect to the fraudulent importation and possession of 511 video casettes of a value of £18,191.60 cent in respect of which no import duty and special refugee charge were paid amounting to £7,971.60 cent.

When Customs officers. acting on information visited on the 17th May, 1984, the video club of the appellant at Limassol, and with his consent searched the premises, nothing appeared to incriminate him at that moment, yet in the afternoon of the same day and after he was arrested on the strength of a judicial warrant he gave a statement to the Police of the circumstances under which he had himself imported the aforementioned video casettes from Greece without paying the prescribed duties and charges.

The Customs Authorities later forfeited the said casettes and in the circumstances the learned trial Judge took into account the forfeiture, as he said.

In passing sentence there was also taken into consideration another outstanding offence that of publishing obscene matter and a sentence of nine months' imprisonment was imposed on the appellant on each count, the two sentences, however, were directed to run concurrently. The learned trial Judge stressed the fact that defrauding the revenue or attempting to do so by offending against the Customs and Excise Laws constitutes a very serious matter, and he pointed out that on account of the inherent difficulties that exist in carrying out, in the present circumstances of travelling from country to country, an effective checking on travellers, the application of the Law depends to a great extent on the manner with which those going through customs face the abligations imposed on them by the relevant legislation. No doubt this is in our view a very legitimate approach.

Before proceeding any further it may be said here that the appellant is a poor family man without previous convictions, displaced from Famagusta and indebted to a Bank in the sum of £20,000 which appears to have been used for his reactivation after his displacement.

It has been rightly conceded by counsel for the appellant in the light of ample authority (see *Pefkos and Others* v.

The Republic, 1961 C.L.R. 340), that where an accused person is found guilty of several offences and the component parts of the heavier offence form part and parcel of the other offences of less gravity, the correct course is to record convictions on the lesser or subsidiary ones but not to pass sentence on them otherwise the principle that a person should not be punished twice for the same act or omission, would be offended. This, however, is only a matter of principle that is being examined here as in substance the two sentences were ordered to run concurrently and therefore could not adversely affect the appellant as such, although no sentence should have been passed on one of the two counts and same is set aside on count 3.

There remains therefore the issue whether the sentence of nine months on count 8 is manifestly excessive or not in the circumstances of this case. As it has been said in the case of the *Attorney General of the Republic* v. *Phoedias Theofanous* (1965) 2 C.L.R. 26, there is no doubt that defrauding the revenue is a serious offence and even in cases of first offenders a trial Court, in certain cases, may very properly impose a sentence of imprisonment.

We subscribe fully to this principle but bearing in mind all the circumstances of this case as well as those relating in particular to the person, the family and financial condition of the appellant and his whole conduct of making a clean breast of it at such a stage of police investigations as to render his conduct indicative of his repentance and genuine remorse, we have come to the conclusion that there is room justifying the reduction of the sentence of imprisonment imposed inasmuch as there appears not to have been given the proper weight to the forfeiture of the goods whose market value was in the region of £10,000, a substantially big amount, not only for a man of the financial position of the appellant but for any person at that.

Hence the sentence of imprisonment is reduced to one of four months on count 8. No sentence is imposed on count 3.

The appeal therefore is allowed to that extent and the sentence imposed varied accordingly.

Appeal allowed.
Sentence reduced.