# CASES

DECIDED BY

# THE SUPREME COURT OF CYPRUS

ON APPEAL

AND

IN ITS ORIGINAL JURISDICTION

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# CYPRUS LAW REPORTS

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[A LOIZOU, LORIS, PIKIS, JJ]

GEORGHIOS PAVLOU KOUKOS,

*Appellant,*

*v.*

THE POLICE,

*Respondents.*

*(Criminal Appeal No. 4723).*

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*Sentence—School-breaking and commission of felony therein (stealing) contrary to s.s. 294(a) and 20 of the Criminal Code, Cap. 154—One year's imprisonment on ex-accused 1, suspended for three years and nine months' imprisonment on appellant—Appellant and ex-accused 1 in substantially the same position—Disparity—In the circumstances unjustifiable—Sentence on appellant suspended on same terms as the sentence on ex-accused 1.*

*Sentence—Parity of treatment—Not limited to the mode of punishment, but extends to the manner of its execution—*

*Disparity of sentences offends against common sense and the principle of equality before the Law—In what circumstances this Court interferes with a sentence on the ground of disparity.*

*Sentence—Imprisonment, suspension of—Factors to be taken into account in the exercise of a trial Court's discretion.*

*Sentence—Principles governing interference with a sentence by this Court.*

*Constitutional Law—Constitution, Article 28.1.*

The appellant and two co-accused broke into the school for trainable children of Larnaca and stole therefrom two electric mixers valued £70. Appellant and ex-accused 1 were aged 19 and ex-accused 3 aged 16. In passing sentence the trial Court took into consideration a number of similar offences, six thefts at the instance of ex-accused 1 committed before the said school-breaking and three thefts at the instance of the appellant committed while on trial for the school-breaking. Ex-accused 1 had a previous conviction that resulted in his committal to the Reform School. Appellant had only a minor previous conviction. Ex-accused 3 had no previous conviction. Both the appellant—and ex-accused 1 had problematic personalities. Each accused confessed his crime on arrest, promising to desist from criminal conduct in the future.*

Ex-accused 1 was sentenced to one year's imprisonment suspended for three years, coupled with a supervision order. Ex-accused 3 was put on probation for three years. The appellant was sentenced to nine months' imprisonment. The reason for the distinction between the sentence imposed on the appellant and on ex-accused 1 was appellant's failure to live up to his promise to desist from criminal conduct in the future.

Medical certificates produced before this Court indi-

* The first to be arrested was ex-accused 1 who confessed the commission of the school-breaking as well as the other six thefts and named as his accomplices in respect of the school-breaking the appellant and ex-accused 1.

cate that appellant is suffering from epilepsy. The records of the National Guard showed that he was discharged from service therein on account of his ill health and troubled personality.

The submission to this Court that the sentence on the appellant is manifestly exessive is twofold:

(a) that it is patently excessive on its own merits and

(b) that it is manifestly excessive in comparison to the sentence imposed on ex-accused 1.

*Held,* allowing the appeal and suspending the sentence of imprisonment, A. Loizou, J. dissenting: A) Per Pikis, J., Loris J. concurring: (1) This Court does not assess, but reviews the sentence imposed by the trial Court. It does not interfere with a sentence, unless such interference is justified in face of departure from or disregard of principle of sentencing or when the sentence is manifestly excessive and the element of excess is as indicated in *Philippou* v. *The Republic* (1983) 2 C.L.R. 245 "such as to provide an objective basis for its ascertainment".

(2) Considering the great similarities between the position of the appellant and the position of accused 1 the differences in their treatment cannot be overlooked. Parity of treatment of persons in substantially the same position is a deep rooted principle of criminal justice, interwoven with the wider ends of justice. Disparity of sentences is offensive to common sense and derogatory of equality before the law and the administration of justice, safeguarded by Article 28.1 of the Constitution. Equality does not connote mathematical nicety. The principle of parity of sentences does not eliminate the discretion of the trial Court to take into account both the intrinsic culpability and the personal circumstances of each accused. For disparity to make an impact on appeal the differences between the sentences imposed must be substantial.

(3) The rule of parity is not limited to the mode of punishment, but extends to the manner of its execution. A suspended sentence of imprisonment is not another type of a non-custodial sentence. A wide discretion vests in

the trial Court to suspend the sentence of imprisonment in furtherance of the ends of justice. The gravity of the offence, its prevalence, the age of the accused, his record, his mental and physical health and the likelihood of reform are among the most consequential factors bearing on the exercise of the discretion.

(4) The prevalence of the offence of house-breaking and the proclivity of the appellant to steal were factors that could offer justification for non-suspending the sentence, notwithstanding appellant's age, troubled personality and virtually clean record. But the decision becomes indefensible in view of the decision to suspend the sentence on accused 1. Comparison of the two sentences discloses a patent inequality of treatment apt to generate feelings of injustice.

B) Per Loris, J. that the disapproval of the punishment appealed against, does not extend to the nature of the punishment as such. The gravity of the offence coupled with its prevalence nowadays, would justify the sentence imposed, notwithstanding appellant's age What really is not approved is the decision to suspend the sentence imposed on accused 1, without giving any reason in connection with the differentiation of the sentence imposed on accused 1 and the appellant, who were jointly tried with a third person as well.

*Appeal allowed. Sentence suspended on same terms as in the case of ex-accused 1.*

**Cases** referred to:

*Nicolaou* v *The Police* (1969) 2 C.L.R. 120;

*Loizou* v. *The Republic* (1971) 2 C.L.R. 196;

*Iacovou and Others* v. *The Republic* (1976) 2 C.L.R. 114;

*Foulias* v. *The Police* (1978) 2 C.L.R. 56;

*Ktimatias and Another* v. *The Republic* (1978) 2 C.L.R. 82;

*Fournaris and Another* v. *The Republic* (1978) 2 C.L.R. 28;

*Koufou* v. *The Republic* (1979) 2 C.L.R. 134;

*Azinas and Another* v. *The Police* (1981) 2 C.L.R. 9;

*Rahma* v. *The Republic* (1984) 2 C.L.R. 363;

*R.* v. *Towle, The Times,* 23.1.86;

*R.* v. *Wintle, The Times,* 23.1.86;

*Nicolaou* v. *The Republic* (1985) 2 C.L.R. 52;

*Theodorou* v. *The Police* (1975) 2 C.L.R. 191;

*Philippou* v. *The Republic* (1983) 2 C.L.R. 245;

*Jenkinson and Another* v. *The Police* (1983) 2 C.L.R. 295;

*Constantinou* v. *The Republic* (1977) 9-10 J.S.C. 1527;

*Iacovou and Another* v. *The Republic* (1977) 9-10 J.S.C. 1554;

*Police* v. *Mouzouris* (1978) 2 J.S.C. 180;

*Mavros and Others* v. *The Police* (1976) 1 J.S.C. 1074;

*Demetriou* v. *The Republic* (1976) 2 J.S.C. 386;

*Athanasiou* v. *The Republic* (1978) 2 C.L.R. 17.

**Appeal against sentence.**

Appeal against sentence by Georghios Pavlou Koukos who was convicted on the 21st December, 1985 at the District Court of Larnaca (Criminal Case No. 10357/85) on one count of the offence of School-breaking and commission of a felony contrary to sections 294(a) and 20 of the Criminal Code, Cap. 154 and was sentenced by G. Nicolaou, D.J. to nine months' imprisonment.

*A. Mathikolonis,* for the appellant.

*A. M. Angelides,* Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

The following judgments were read:

A. Loizou J.: The appellant was jointly charged with two other young persons with the offence of school-breaking and the commission of a felony therein, contrary to sections 294(a) and 20 of the Criminal Code, Cap. 154.

The particulars of the offence as set out on the charge were that all the accused, between the 2nd June, 1985, and the 4th June, 1985, both dates inclusive, on a date unknown to the prosecution, in Larnaca in the district of Larnaca, broke and entered into the school-house of the School for Retarded Children "St. Spyridon" and stole therefrom a mixer of Moulineux make of the value of £70, the property of the school.

All three accused pleaded guilty to the charge. The facts of the case as explained by the prosecuting officer were that in the early hours of the 4th June, 1985, the three accused, having broken the glass-pane of the rear door of the said school in Larnaca, entered therein and from its store they stole the said mixer. The Police suspicion turned against ex-accused 1, who was arrested on the following day and he gave a written statement in which he confessed the commission of this offence, as well as other six similar offences.

Furthermore ex-accused 1, led the Police to an open space in Larnaca where they had hidden among bushes, the stolen electric mixer, as well as stolen items which related to the other cases.

After the confession of ex-accused 1, in which he named as accomplices the appellant and ex-accused 3—the appellant was accused 2 at the trial—both of them were also arrested and they gave written statements admitting as well the commission of this offence. The appellant further admitted to have committed another similar offence on the 4th June, 1985 jointly with the other ex-accused, that is shop-breaking and stealing therefrom cigarettes of the value of £30 and the sum of £10 in cash. Ex-accused 3, admitted to have committed seven similar offences. Ex-accused 1, was eighteen years of age. The appellant 19 years of age and ex-accused 3, sixteen years of age.

The learned trial Judge in his well reasoned judgment referred to the facts relevant to the three accused and observed with regard to the appellant that in spite of the assurances he gave through his advocate to the Court as part of the plea in mitigation and to the Welfare Officer who prepared the Social Investigation Report, that he had repented for his conduct and that he was considering seriously a change in his behaviour, yet he committed shortly afterwards and before sentence was passed on him three offences of theft.

The learned trial Judge also pointed out the frequency with which cases of house-breaking and stealing are committed by young persons who in most instances commit a series of such offences until they are arrested and that this state of affairs causes, as it ought to, concern to the Courts and that the need to protect the public from burglars makes inevitable on many occasions the imposition of severe sentences without that meaning that there was no room for considering the personal circumstances of the accused in appropriate cases.

He then went on to deal with the question of equal treatment of co-accused and said that if that was to be the proper standard it had to be based on the needs arising for the treatment of each accused. He also stressed that it was to the credit of ex-accused 1, that when he was arrested as a suspect he immediately admitted the offence and a number of other offences and gave particulars for the other persons who were involved with him and that without his confession and the assistance which he gave, it was probable that at least certain of those offences would not have been detected. Indeed it was upon his confession that the appellant and ex-accused 3, were interviewed by the Police and admitted the offence and the stolen mixer and other stolen items were found. Whilst on this point I would like to reiterate the well established principle of sentencing that repentance after arrest which is demonstrated by a sincere confession, including confession to other crimes for which the police have no information for their detection, as well as any disclosure of accomplices and information leading to the recovery of stolen property

are mitigating factors and they can be one of the factors justifying differentiation in the sentence imposed on accused jointly charged. (See Pikis, Sentencing in Cyprus, 1978, page 27 and the authorities therein referred to. Also *Rahma* v. *The Republic* (1984) 2 C.L.R. 363).

All three accused asked that all other outstanding offences be taken into consideration by the Court in passing sentence in this case, a course to which the prosecution consented and in the case of the appellant the three other offences committed between the adjournment of the case after his plea of guilty was entered and the day he came up for sentence, were also taken into consideration.

The facts relevant to the three last cases of stealing were explained to the Court and they were to the effect that on the 14, 16, and 18 of December, 1985, he entered into the work-shop of Antoni Costa Karadja in Koloyera street in Larnaca and stole on the first occasion the sum of £30 from a brief-case found in an unlocked box, on the second occasion and in the same way he stole another £30 and in the same way another £50 on the third occasion. It appears that he was on a treasure hunt every other day.

As regards their previous convictions ex-accused 1, had been committed to the Lamboussa Reform School and remained there between the years 1981 and 1983 when he was released and joined the National Cuard but his service was suspended because of the psychological problems he presented. The learned trial Judge noticing that he was a man with many serious personality problems considered whether it would serve the wider interests of society if the Court "dared give to accused 1, a further chance for non-institutional reform". The appellant had one previous conviction for indecent exhibition contrary to section 177 of the Criminal Code, for which he had been bound over in the sum of £100, for two years to observe the law.

He then considered everything placed before him on behalf of each accused. He had for that purpose the Social Investigation Report for each one of them in addition to other relevant facts including their record of previous convictions and imposed the following sentences:

On the first accused, one year's imprisonment, suspended for three years. The appellant was sentenced to nine months imprisonment and the third accused, was placed on probation for a period of three years with certain conditions.

The appellant appealed against the sentence so imposed having himself filled in and signed the Notice of Appeal, the ground on which he based same being that the sentence was manifestly excessive.

Counsel for the appellant who appeared also for him at the trial invited the attention of this Court to a fact which had not been placed before the learned trial Judge, namely that his client suffered from some form of epilepsy for which he had his military service suspended. In fact as stated in the relevant military record, there had been reported loss of consciousness probably of a hysteric type whereas a medical certificate issued by a private doctor on the 23rd December 1985, described him as suffering from epilepsy and being on antiepileptic medication. The doctor concluded by expressing the view that imprisonment at that stage would increase his problems and minimize his chances of developing a normal personality.

In my view all mitigating factors that are known or could reasonably be discovered—and the health of an accused person standing trial is a relevant factor in relation to the sentence—must be placed before the trial Court and there should not be two stages of addresses in mitigation, one at the trial and one on appeal. Be that as it may, I do not think that the condition of the appellant as such could in any way affect the sentence imposed on him as same for the reasons that I shall later give is not in any way manifestly excessive, nor could this factor have materially affected it.

Counsel for the appellant was then invited to comment on a possible disparity of sentence. This is a ground which has been repeatedly considered by the Courts and there are many judicial pronouncements on it both here and in England. If any mention need be made to Cyprus cases it is sufficient to refer to *Nicolaou* v. *The Police* (1969) 2 C.L.R. 120; *Loizou* v. *The Republic* (1971) 2 C.L.R. 196; *Iacovou and Others* v. *The Republic* (1976) 2 C.L.R. 114;

*Foulias* v. *The Police* (1978) 2 C.L.R. 56; *Ktimatias and Another* v. *The Republic* (1978) 2 C.L.R. 82; *Fournaris and Another* v. *The Republic* (1978) 2 C.L.R. 28; *Koufou* v. *The Republic* (1979) 2 C.L.R. 134; *Azinas and Another* v. *The Police* (1981) 2 C.L.R. 9 and more recently to the case of *Rahma* v. *The Republic* (1984) 2 C.L.R. 363.

In the *Iacovou* case (supra) Triantafyllides, P., in delivering the judgment of the Court dealt with the principle of disparity of sentence as a ground of appeal and quoted with approval at p. 128-129 of the report what was stated in Thomas on Principles of Sentencing at pp. 69-70.

I shall quote therefrom only a brief passage in which the position is duly summed up. It reads:-

> "A more difficult problem arises when the appellant is the one who has received the most severe sentence, and complains that there is no proper ground for the distinction between himself and his co-defendants. The Court may take the view that his sentence is excessive when considered on its own merits, and reduce it on the ground, but a dilemma arises when the Court is of the opinion that the sentence passed on the appellant is correct and those passed on his co-defendants are inadequate. To reduce the sentence passed on the appellant would result in a further incorrect sentence. In the face of this situation the Court will not normally reduce the longer sentence unless the disparity is particularly gross."

Further down and by reference to the case of Reeves 19.11.63 1833/63, it is stated:-

> "The Court stated that 'the mere fact that one co-prisoner has got a lenient sentence does not mean that this Court in every case will reduce the other prisoner's sentence to the same or an equivalent amount. But at the same time the difference may be in certain cases so extreme that justice would certainly not seem to be done, and the prisoner with the higher sentence would suffer all his life under a grievance so that really this Court has to interefere'."

In England the position as summed up in Archbold, Criminal Pleading Evidence and Practice 41st Edition paragraphs 5 - 8 is as follows:

"The fact that one of two defendants jointly indicted has received too short a sentence is not a ground on which the Court of Appeal necessarily interferes with a longer sentence passed on the other; what has to be shown is that the defendant appealing has received too long a sentence. However, in an approriate case the Court may take such a disparity into account: *R.* v. *Richards* [1956] 39 Cr. App. R. 191; *R.* v. *Jeavons* [1964] Crim. L.R. 836; see too *T.* v. *Reeves* [1964] Crim. L.R. 67; *R.* v. *Williams* [1963] Crim. L.R. 865; *R.* v. *Brown* [1964] Crim. L.R. 485; *R.* v. *Sofflet* [1968] Crim. L.R. 622; *R.* v. *Summers* [1972] 56 Cr. App. R. 612, C.A.,; *R.* v. *Heyes* [1974] Crim. L.R. 57, C.A. In *R.* v. *Potter* [1977] Crim. L.R. 112, C.A., the Court restated the principle that a sentence which is not in itself excessive may be reduced on appeal if a participant in the same or related offences has received a sentence which is so disparate that the appellant may be considered to have a justified sense of grievance. It is essential to show such disparity between the sentences that any reasonable man would go away with a burning sense of grievance: *R.* v. *Dickinson* [1917] Crim. L.R. 303, C.A.

For the clearest statements upon the limits of the 'disparity argument' see *R.* v. *Brown* [1955] Crim. L.R. 177 applied in *R.* v. *Stroud* [1977] 65 Cr. App. R. 150, applied in *R.* v. *Hair and Singh* [1978] Crim. L.R. 698."

Relevant also is what was recently said in the case of *Regina* v. *Towle* and *Regina* v. *Wintle*, The Times 23.1. 1986 it was held that "when a Court was considering an appeal against sentence based on disparity, what was relevant was whether right-thinking members of the public, knowing all the facts and looking at what had happened, would say 'Something has gone wrong here in the administration of justice which has resulted in one or more con-

victed persons being treated unfairly'. The fact that particular convicted persons had a sense of grievance was neither here nor there."

It is obvious that the sentence of imprisonment imposed on the appellant who was the oldest of the three co-accused is not manifestly excessive in the circumstances nor is there any disparity as regards the sentence imposed on him in comparison to that imposed on the other co-accused, so as, as the test is, to be considered that something has gone wrong in the administration of justice which has resulted in one or more convicted persons being treated unfairly and justify its reduction by this Court on Appeal.

There were in my view serious grounds for differentiation which have already been referred to in this judgment. As far as ex-accused 1 there was the difference in age, and one year difference in this age-group is significant, his confession and co-operation with the Police in the detection of other crimes and the discovery of stolen property his personality problems with which he is faced as well as his repentance. Whereas and this is what clearly weighed with the learned trial Judge regarding the nonsuspension of the sentence of imprisonment imposed on the appellant, he proved during his trial to be a man not to be taken up on his word. His assurances to the Court given in the address in mitigation and to the Welfare Officer which he recorded in his favour in the Social Investigation Report, proved worthless as immediately thereafter he committed three serious and well planned offences of stealing.

Individualization of sentence is most desirable and disparity of sentence should not be invoked at its expense. The learned trial Judge in my view acted with a sense of duty and in a most proper and fair and indeed lenient manner. He took into account, as he ought to, the disturbing prevalence of offences of house and shopbreaking and stealing committed by young persons. No doubt society has to be protected from anti-social behaviour of youths who go on a stealing spree in complete disregard of other people's property. In fact this disturbing situation calls for a study of its causes by the appropriate bodies of the State

if it is to be stopped at its birth and be prevented from spreading beyond control.

I find no better words to conclude this judgment than repeat what was said by Loris, J., *In Nicolaou* v. *The Republic* (1985) 2 C.L.R. 52 at p. 54, which also shows the prevalence of offences of this nature.

> "Thirty-one shop-breaking within a period of two months is something beyond comprehension; organized shop-breaking of this or of any kind cannot be tolerated and let it be understood that the young age of the offender cannot afford an excuse for such kind of criminal behaviour.
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> The shop-owner, the law abiding citizen, who locks his shop at closing time must rest assured that next morning when he will be reopening same in the ordinary course of his business, he will find all his merchandise intact and the money he has earned working hard during the day, secure in his till.
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> And this end can only be achieved by the enforcement of the Law, such enforcement falling squarely on the shoulders of the Courts who must not flinch in discharging such duty.
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> We must say that we have considered seriously in this case whether we should increase the sentence; at the end we have decided, very reluctantly not to do so."

For all the above reasons I would dismiss the appeal.

PIKIS J.: The appellant and two co-accused were convicted on their own plea of a charge of house-breaking and theft. They broke into the school for Trainable Children at Larnaca and stole therefrom two electric mixers valued, £70.- All three were young persons, appellant and accused 1 aged 19 and accused 3 aged 16. At the request of accused 1 and appellant the trial Court took into consideration in passing sentence a number of similar offences, six thefts at the instance of accused 1 committed before the school breaking and, three thefts committed by appellant while

on trial for the school-breaking. Appellant had only a minor previous conviction that the trial Court regarded trivial enough as to omit reference to it in summing up the facts relevant to sentence. Accused 1 had a previous conviction that resulted in his committal to the Reform School where he stayed for a period of time. The inquiry into the background of appellant and accused 1, carried out by Social Welfare Officers, revealed that both had problematic personalities and found it difficult to adjust to their social environment; a fact duly noted by the trial Court in its judgment. Accused 3 had no previous conviction. Seemingly, each accused confessed his crime on arrest promising to desist from criminal conduct in the future. The failure of appellant to live up to this promise, evidenced by the commission of three offences subsequent to his arrest was, as may be surmised from the text of the judgment, the reason for making a distinction between the sentence imposed on accused 1 and appellant.

The Court sentenced accused 1 to one year's imprisonment, suspended for three years, coupled with a supervision order. Accused 3 was put on probation for a period of three years. Appellant, on the other hand, was sentenced to an immediate term of nine months imprisonment. The sole ground of appeal is that the sentence is, in the circumstances of the case, manifestly excessive. Counsel for the appellant laid emphasis on the disturbed personality of the appellant and drew our attention to medical evidence that suggests it is not unconnected with the state of his mental health. Medical certificates produced before us indicate that appellant is suffering from epilepsy. The record of an electroencephalogram discloses ill-defined epileptogenic potentials on the right temporal region. Further evidence of the disordered personality of appellant is forthcoming from the records of the National Guard certifying he was discharged from service in the army on account of his ill health and troubled personality. Invited by the Court to comment on differences in the position of accused 1 and appellant, relevant to determining whether the sentence is manifestly excessive, counsel submitted the distinction made in their treatment was unjustified and ought not to be sustained. The disparity in the treatment of the two

accused raised, as counsel for the Republic informed the Court, certain question marks in his mind too, but did not go so far as not to support the sentence imposed; leaving the matter of the propriety of the differentiation between these two sentences to the Court.

The submission that the sentence is manifestly excessive is two-fold: (a) that it is patently excessive on its own merits and (b) it is manifestly excessive in comparison to the sentence imposed on accused 1.

The role of an Appellate Court in the sentencing process is confined to the review of the propriety of sentence from an objective view point. Otherwise the assessment of sentence is the province of the trial Court (1). The grounds on which the Court of Appeal may interfere with sentence were summarized and explained (by reference to our case-law) in *Philippou* v. *Republic* (2). The Court of Appeal is no substitute for the trial Court in the assessment of sentence. Interference is only justified in face of departure from or disregard of a principle of sentencing or when the Court concludes that the sentence is manifestly excessive; provided always that the element of excess is, as indicated in *Philippou*, "such as to provide an objective basis for its ascertainment".

The trial Judge took a serious view of the case, compounded by the prevalence of stealing offences. No doubt a trial Court is in a unique position to appreciate the implications of particular crimes on social order and make a choice of the means appropriate to stem their recurrence and ill effects. Despite the disinclination to send young persons(3) with a good record to prison, I am not prepared in the light of the gravity of the offences and their prevalence to question the imposition of a custodial sentence or the length of it. But I cannot overlook differences in the treatment of the accused considering the great similarities in their position. For that reason I probed the validity of

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(1) See, inter alia, Theodorou v Police (1975) 2 C.L.R. 191.

(2) (1983) 2 C.L.R. 245.

(3) See, inter alia, Jenkinson and Another v. The Police (1983) 2 C.L.R. 295.

the distinction made in order to decide whether it breaches the pertinent principle of parity of sentences.

Parity of treatment of persons in substantially the same position is a deep rooted principle of criminal justice, interwoven with the wider ends of justice. Equality before the law and the administration of justice is constitutionally safeguarded in Cyprus by the provisions of Article 28.1 of the Constitution. Disparity of sentences is, as proclaimed in *Nicolaou* v. *The Police* (1), offensive to common sense and derogatory of equality before the law. In this, as in other respects, equality does not connote mathematical nicety; nor is the principle of parity of sentences designed to blunt the sentencing process by eliminating the discretion of the trial Court to impose on each of the accused a sentence that takes due account of both the intrinsic culpability of his conduct and personal circumstances. For disparity to make an impact on appeal the difference between the sentences imposed must be substantial, such as to suggest, in the face of strong similarity in the position of the accused, that justice is not done and for that reason liable to generate feelings of injustice on the part of the appellant(2). Unjustified differences in the treatment of persons jointly accused tend to undermine faith in the law and the administration of justice.

The rule of parity of sentences is not limited to the mode of punishment but extends, on authority, to the manner of its execution. The subject is discussed by Thomas in his work on sentencing (3) by reference to English cases explanatory of the principles governing a suspended sentence of imprisonment. The suspension of a sentence is a consideration separate and distinct from the choice of imprisonment as a mode of punishment and the length of it(4). A suspended sentence of imprisonment is not another

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(1) (1969) 2 C.L.R. 120.

(2) See, inter alia, Constantinou v. Republic (1977) 9-10 JSC 1527; Iacovou and Another v. Republic (1977) 9-10 JSC 1554; Koufou v. The Police (1979) 2 C.L.R. 134.

(3) Principles of Sentencing, 2nd ed., pp. 71-72, 240-241.

(4) I had opportunity to discuss the subject in Police v. Mouzouris (1978) 2 JSC 180—a decision of the District Court.

type of non-custodial sentence: it is for all purposes a sentence of imprisonment its activation being dependent on future good conduct of the accused. The suspension of a sentence is not governed by inflexible statutory criteria. A wide discretion vests in the Court exercised in the interest of the promotion of the ends of criminal justice. The gravity of the offence, its prevalence, the record of the accused, his age, mental and physical health, as well as the likelihood of reform under threat of a sentence of imprisonment, are among the most consequential factors bearing on the exercise of the discretion of the Court whether to suspend a sentence. The nature and ambit of the discretion of the Court in this field were the subject of discussion and analysis in *Mavros and Others* v. *The Police*(1) and *Demetriou* v. *The Republic*(2). Where the decision is founded on due consideration of the criteria relevant to the exercise of the discretion, we shall not, on appeal, substitute our discretion for that of the trial Court, unless the sentence is, on account of the mode of the execution of the sentence of imprisonment, manifestly excessive.

In *Athanasiou* v. *The Republic*(3) the Supreme Court took the view that the disturbed personality of the accused was a factor relevant to the suspension of a sentence and, for that reason, were unable to support a sentence of two months' imprisonment passed by the Military Court for repeated acts of desertion from the National Guard. Undoubtedly the interplay between the psychological disorder and proneness to crime on that account, is what makes the accused's personality relevant to the suspension of sentence; with proper treatment the tendency to crime may disappear. The prevalence of the offence of house-breaking and the proclivity of the appellant to steal were factors that could offer justification for the decision to refrain from suspending the sentence on appellant, notwithstanding his age, troubled personality and virtually clean record.

Nevertheless, the decision becomes indefensible in view

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(1) (1976) 7 JSC 1074.

(2) (1976) 2 JSC 386.

(3) (1978) 2 C.L.R. 17.

of the decision to suspend the sentence imposed on accused 1. Comparison of the two sentences discloses a patent inequality of treatment apt to generate feelings of injustice. Appellant and accused 1 were of the same age. Both had personality problems and had corresponding difficulties to adjust to the order of society. If anything, the problems of the appellant in this regard were more serious than those of accused 1. The record of appellant was, if anything, marginally better than that of accused 1. In terms of gravity of conduct, the culpability of accused 1 was more serious as may be gathered from the respective sentences of imprisonment imposed on the two accused. Though the Judge did not specifically reason the differentiation between the sentences imposed on appellant and accused 1, the only inference we can draw is that he saw sufficient justification for it in the fact that appellant committed the offences taken into consideration after the school breaking, as opposed to appellant 1 who committed them before that offence. The similarity in the position of the two co-accused in terms of culpability, personal circumstances and need for help to overcome their problems was so great as to leave no room for making a valid distinction in the treatment accorded to each of them.

At the end of the day the disparity between the treatment of appellant and accused 1 cannot be properly justified by reference to any truly noticeable differences in their position. For that reason the sentence of nine months' imprisonment on the appellant will be suspended subject to similar terms and conditions as in the case of accused 1.

LORIS J.: I had the opportunity of reading in advance the judgment of my brother Judge Pikis, and I am in full agreement with him.

I wish to make it clear though, that my disapproval of the punishment appealed against, does not extend to the nature of the punishment as such; definitely the gravity of the offence coupled with its prevalent character nowadays, would justify the term of imprisonment imposed in spite of the age of the appellant. What really does not meet with my approval is the decision of the learned trial Judge, to suspend the sentence imposed on accused No. 1, without

giving any reason in connection with the differentiation of the sentence imposed on accused No. 1 and the appellant, who were jointly tried, with a third person as well, on a charge of breaking and stealing.

In short, it is the "disparity of sentence", (which in *Nicolaou* v. *The Police*, (1969) 2 C.L.R. 120 at p. 122 was stated to be "offensive to the common sense of justice") that is objectionable. The Rule of parity of sentence which is undoubtedly not limited to the mode of punishment extends to the manner of its execution (vide Thomas' Principles of Sentencing, 2nd ed., pp. 71-72, 240-241).

Appellant and accused 1, both of the same age, were in the same position as regards culpability in connection to which they have both pleaded guilty; and one could say that the appellant was in a much better position than accused 1, as regards previous convictions and outstanding offences taken into consideration in passing sentence in the present case under appeal, facts which are reflected by the term of imprisonment imposed on accused No. 1 (one year) and the appellant (nine months); thus accused 1 has a previous conviction that resulted in the committal to the Reform School, whilst the appellant has a minor, not similar previous conviction. In the case of accused 1, six breakings and stealings were taken into consideration in passing sentence in this case, whilst in the case of the appellant one breaking and stealing committed jointly with accused 1 and three stealings committed by him alone were taken into consideration; it is true that the three stealings in question took place at some time after his plea of guilty and the passing of sentence in the present case; but this fact alone cannot prove that the appellant is incorrigible.

On the other hand, as regards personal circumstances, both accused 1 and the appellant were more or less in the same position, the appellant needing obviously more help in view of his disturbed personality.

In view of the disparity between the treatment of the appellant and accused 1, which cannot be justified by reference to the position of the two accused as above stated,

I feel duty-bound to intervene with the sentence under appeal, and I would suspend the sentence of nine months' imprisonment imposed on the appellant subject to the same terms and conditions as in the case of accused 1.

A. Loizou J.: In the result the appeal is allowed by majority. The sentence of imprisonment of nine months imposed on the appellant to be suspended on the same terms and conditions as that of ex accused 1.

*Appeal allowed.*