1986 October 13

[TRIANTAFYLLIDES, P. DEMETRIADES, PIKIS, JJ.]

1. YIANNAKIS IOANNOU,
2. CHRISTAKIS ACHILLEA PANAYI,

Appellants

v.

THE POLICE,

Respondents

(Criminal Appeals Nos. 4773 and 4774)

Sentence—Shop-breaking and stealing of money and valuables totalling £20—Appellants' aged 17 and 18 respectively—Three other similar offences committed by both appellants and two others committed separately by appellant 2 taken into consideration—Criminal record of appellant 1 clean—Appellant 2 had five previous convictions for similar offences—Appellant 2 had a tragic family background—6 months' imprisonment on each appellant—In the circumstances, sentence on appellant 2 upheld, but that on appellant 1 reduced

Sentence—Young Offenders—Sentencing principles governing the imposition of a sentence of imprisonment on young offenders

In passing the above sentence on the appellants, aged 17 and 18 respectively, the trial Judge took into consideration three other similar offences jointly committed by them and two others separately committed by appellant 2. Appellant 2 had five previous convictions for similar offences, whilst appellant 1 had a clean criminal record. Appellant 2 had a tragic family background, orphaned of his father at the age of 2½, enclaved for six months in the aftermath of the Turkish invasion and subsequently virtually abandoned by his mother. Appellant 1, who was 16 at the time of the commission of the offence, appears to have repented for his conduct.

Held, dismissing the appeal of appellant 2: (1) Lack of parental care and the forgiveness it should generate cannot be allowed to pardon crime indefinitely. As may be gathered from appellant's previous convictions the Court showed a fair degree of toleration towards him, which regrettably did not have the anticipated effect of helping him reform his ways

(2) In the circumstances the sentence on appellant 2 was neither wrong in principle nor excessive.

Held, further, allowing the appeal of appellant 1: (1) The case of this appellant is different. Not only was he younger than appellant 2, but a first offender too. The consideration, that crimes of shop-breaking have assumed "proportions of social evil", cannot override the need to individualise the sentence in the light of appellant's youth and absence of previous convictions. In cases of young offenders the element of deterrence can only be allowed to be decisive, if the offence is peculiarly prevalent among young persons or if it appears to be a measure of last resort.

(2) In this case there was a likelihood of the appellant responding to other means of dealing with him, particularly a probation order. As, however, the appellant has already served three months in prison and is presently serving as a conscript in the National Guard, an experience likely to reinforce his sense of social discipline, it would be unjust to subject him to any other form of punishment. The sentence of imprisonment would be varied to allow his immediate release.

Appeal of appellant 1 allowed.
Appeal of appellant 2 dismissed.

Cases **referred to:**

Varnava v. *The Police* (1975) 2 C.L.R. 129;

Antoniades v. *The Police* (1986) 2 C.L.R. 21.

Appeal against sentence.

Appeal against sentence by Yiannakis Ioannou and Another who were convicted on the 17th May, 1986 at

the District Court of Nicosia (Criminal Case No. 27182/85) on one count of the offence of shop-breaking and stealing contrary to sections 294(a), 255 and 20 of the Criminal Code, Cap. 154 and was sentenced by Kronides, S.D.J. to six months' imprisonment.

E. Efstathiou with *C. Efstathiou*, for the appellants.

No appearance for the respondents.

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

PIKIS J.: The appellants, aged 17 and 18 respectively on the date of their conviction, i.e. 15th July, 1986, were sentenced to six months' imprisonment on a count of shop-breaking and theft of money and valuables totalling £20.- (in value). In passing sentence the Court took into consideration three other offences jointly committed by the appellants and two others separately committed by appellant 2 all similar in nature to the offence they admitted and for which they were convicted and sentenced. Counsel for the appellants challenged the propriety of the sentence of imprisonment in respect of both appellants contending it was wrong in principle having regard to (a) the age of the appellants, and (b) their personal circumstances. He drew our attention to the sentencing principles emerging on a review of our caselaw establishing that imprisonment in the case of young offenders is a measure of last resort and that in the case of young offenders in particular the likelihood of reform of the offender should be a very prominent consideration. This is a correct analysis of the sentencing principles relevant to young offenders so well established to need no support by reference to decided cases.

No doubt the tragic family background of appellant 2, orphaned of his father at the age of $2\frac{1}{2}$ and other misfortunes, enclaved for three months at the age of six in the aftermath of the Turkish invasion and subsequent virtual abandonment by his mother, merited the sympathy of the Court and warranted a careful approach to the choice of the mode of punishment and its extent; lest he might be punished for traits picked up in the misery of his neglect.

On the other hand, lack of parental care and the forgiveness it should generate cannot be allowed to pardon crime indefinitely. Nor can feelings of compassion for the person of the accused be allowed to override the criminal process and lead to writing off the crime of the accused. This emerges clearly from the judgment of Triantafyllides, P., in *Varnava* v. *The Police*(1).

As may be gathered from the previous convictions of appellant 2 for similar offences, five in number (excluding the last one of 22nd June, 1985, recorded after the present offence), Courts showed considerable sympathy and understanding to the problems of the appellant and a fair degree of toleration. He was sent for a period to the Reform School; he was fined as well as bound over on another occasion to come up for judgment. Regrettably the understanding shown by the Court to the appellant did not have the anticipated effect of helping him reform his ways and conform to the dictates of the law. In face of this reality and persistence of appellant 2 in the pursuit of criminal ventures his imprisonment was not only an obvious but perhaps an unavoidable course. Still, short enough to allow the appellant to rejoin society after a true taste of the punishment likely to befall him in case of future repetition. In our judgment there is no room for interfering with the sentence imposed on appellant 2. It was neither wrong in principle nor in any sense excessive.

The story is different with regard to appellant 1. Not only was he younger than appellant 2 but a first offender too. He was 17 at the time of the conviction and 16 at the time of the commission of the offence. Though we agree that crimes of shop-breaking and theft are prevalent and in fact as we noted in *Antoniades* v. *The Police(2)* "have assumed the proportions of a social evil", this consideration could not obliterate the need to individualize the sentence in light of the youth of the appellant and absence of previous convictions. The emphasis laid on deterrence by the learned trial Judge was misplaced for in the case of young offenders it must be balanced by the strong interest

(1) (1975) 2 C.L.R. 129.
(2) (1986) 2 C.L.R. 21.

of society in the reform of the accused. In cases of young offenders the element of deterrence can only be allowed to be decisive if the offence is peculiarly prevalent among young persons; otherwise imprisonment can only be imposed if it appears to be justified as a measure of last resort. No such conclusion could be arrived at in this case in the absence of any indication of failure on the part of the appellant to respond to other mode of punishment. The repentance shown by the appellant marked by his confession to the Police authorities of the crimes committed and admission of them before the Court, as well as the report of the Welfare Office suggesting that appellant appears to have repented for his conduct, offered a real prospect of the likelihood of the appellant responding to other means of dealing with him; particularly a probation order. As it is, the appellant has already served some three months in prison and is presently serving as a conscript in the National Guard, an experience likely to reinforce his sense of social discipline. In face of this reality we consider it unjust to subject the appellant to any other punishment. For that reason we order his immediate release.

The appeal of appellant 1 is allowed and the order of imprisonment is varied to allow his immediate release. The appeal of appellant 2 is dismissed.

Appeal No. 4773 allowed.
Appeal No. 4774 dismissed.