

1986 July 7

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

NICOS GASTERATOS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4731).

Sentence—Possession of a 0.38 calibre revolver without a permit of the Council of Ministers contrary to sections 2, 4(1)(2)(b) of the Firearms Law 38/74 as amended by Law 27/78, carrying the said revolver contrary to sections 2, 4(1)(2)(a) of the same law, possession of explosive substances, namely six rounds of ammunition of 0.38 calibre contrary to sections 4(1)(e), (4)(d) and 5(a)(b) of the Explosive Substances Law, Cap. 54 as amended by Law 27/78 and carrying such substances contrary to sections 2, 4(1)(e) and 4(d), 5(a)(b) of Cap. 54 as amended—One and a half years' imprisonment on the first of the above charges, two years in respect of the second and one year in respect of each of the remaining charges, the sentences to run concurrently—Conduct of appellant did not, but for his personal circumstances, merit the leniency shown to him—Appeal against sentence dismissed.

The appellant, who is 40 years of age comes from Greece and was residing at Limassol. He is married, but separated from his wife who lives in Austria. He has two

children, a girl aged 13 and a boy aged 5, who live with appellant's parents in Greece. The appellant provides for the support of all four.

5 On the 11.1.86 the appellant was a passenger in a motor car, which overturned on the Nicosia-Limassol road. He refused to be taken to the Hospital, but as he lost consciousness he was taken there. He accepted to be treated there, but he gave a false name. The trial Court thought that this behaviour was consistent with an effort
10 to avoid detection of the above offences.

The appellant was convicted on his own plea of the offences hereinabove described and was sentenced to the said terms of imprisonment. His plea in mitigation was that the revolver belonged to a friend of his, a sailor,
15 who gave him for safe keeping and that he had it with him as he had no permanent home to keep it.

In its judgment the Assize Court referred to the occasion it had to stress in two other cases the seriousness of such offences and to refer therein to the case law on
20 the subject and said that it reiterated such observations in the present case. On the basis of this fact the appellant complained that the judgment was not duly reasoned. He further complained that there was no individualisation of the sentences imposed.

25 *Held, dismissing the appeal:* (1) The non-explicit reference to the previous remarks and the case law does not render the judgment as lacking in reasoning. In fact the judgment is duly reasoned.

30 (2) The Assize Court did consider the personal circumstances of the appellant in addition to those relating to the commission of the offence and acted accordingly.

(3) The whole conduct of the appellant did not, but

for his personal circumstances, merit the leniency shown to him by the Assize Court.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Nicos Gasteratos who was convicted on the 23rd January, 1986 at the Assize Court of Nicosia (Criminal Case No. 1677/86) on one count of the offence of possessing a revolver contrary to sections 2 and 4(1)(2)(b) of the Firearms Law, 1974 (Law No. 38/74) (as amended by Law No. 27/78), on one count of the offence of possessing a revolver contrary to sections 2 and 4(1)(2)(a) of the above Law, on one count of the offence of possessing explosive substances contrary to sections 4(1)(e), 4(d) and 5(a)(b) of the Explosive Substances Law, Cap. 54 (as amended by Law No. 27/78) and on one count of the offence of carrying explosive substances contrary to sections 2, 4(1)(e), 4(d) and 5(a)(b) of the above Law and was sentenced by Nikitas, P.D.C. Hadjiconstantinou, S.D.J. and Michaelides, D.J. to one and a half years' imprisonment on count 1, to two years' imprisonment on count 2, and one year's imprisonment on the remaining two counts, the sentences to run concurrently.

E. Vrahimi (Mrs.), for the appellant.

M. Kyprianou, Senior Counsel of the Republic. for the respondent.

A. LOIZOU J. gave the following judgment of the Court. The appellant was found guilty on his own plea of four counts, namely:

Count 1. Possession of a 0.38 calibre revolver without a permit from the Council of Ministers, contrary to Sections 2, 4(1)(2)(b) of the Firearms Law 1974, (Law No. 38 of 1974) as amended by Law No. 27 of 1978.

Count 2. Carrying the said revolver without a permit from the Council of Ministers contrary to Sections 2, 4(1)(2)(a) of the aforesaid Law.

5 Count 3. Possession of explosive substances namely six rounds of ammunition of 0.38 calibre contrary to section 2 and 4(1)(ε)(4)(δ), 5(α)(β), of the Explosive Substances Law, Cap. 54 as amended by Law No. 27 of 1978.

10 Count 4. Carrying same contrary to Sections 2 and 4(1)(ε) (4) (δ) 5(a) (b) of the same Law set out in Count 3 hereof.

15 He was sentenced by the Nicosia Assize Court to one and a half years' imprisonment on Count 1. two years' imprisonment on Count 2 and one year's imprisonment on each of the remaining two counts. All sentences to run concurrently and the exhibits were forfeited.

20 The appellant who comes from Greece is 40 years of age and was residing at Limassol. In fact he was given a three months residence permit for the purpose of holidays, but contrary to the terms of his permit he found employment in a night-club in Limassol. He is married but separated from his wife who lives in Austria. He has two children, a girl aged 13 and a boy aged 5 who lives with his aged parents in Greece and he provides for the support of all four.

25 On the 11th January, 1986, in company with a certain Victor Josef, he came to Nicosia and visited a gambling club. Around noon of the same day and whilst returning to Limassol in a hired car on the new motor-way driven by Josef the latter lost control of the vehicle which veered
30 from its course and overturned in a nearby field. The ap-

pellant was thrown off the vehicle to some distance and he was injured. A driver who happened to be passing by, stopped and offered help. Whilst there he overheard the appellant telling his companion, "Did you conceal that?". The witness considered this as suspicious and reported the matter to one of the Police Constables who arrived at the scene of the accident. The appellant refused to be taken to the Nicosia General Hospital pretending that he did not suffer any injuries but whilst discussing this matter, he lost consciousness and he was anyway taken to Nicosia General Hospital. There he accepted to be treated in view of the insistence of the staff but he gave a false name. The Assize Court thought this behaviour of the appellant as consistent with an effort to avoid detection of the offence for which he was ultimately prosecuted and to which he pleaded guilty. Both the revolver and the rounds of ammunition were found by the Police experts to be in good serviceable condition.

The appellant in his plea in mitigation alleged that the revolver belonged to a friend of his, a sailor who was on a trip to Lebanon and who gave it to him for safe keeping and that he had it with him because he had no permanent home in Limassol to keep it. The appellant has no previous conviction and through his then counsel he expressed his regret and repentance for the offences he had committed.

The appeal against the sentences imposed is that same are manifestly excessive. As the appellant was not represented by counsel this Court assigned to him an advocate to defend him in view of the gravity of the case which made it desirable in the interest of justice so to do. Whilst on this point we want to express our appreciation to Mrs. E. Vrahimi who happened to be in Court for another case and who accepted the assignment of the Court.

Learned counsel has advanced in this appeal a twofold argument, (a) that there was no proper reasoning in the judgment of the Court and (b) that the Assize Court did not individualize, as it ought to, the sentences imposed.

5 The first argument was based on the fact that the Assize Court in its judgment referred to the occasion it had to stress in an emphatic manner in two other cases tried by it recently, as they said the seriousness of such offences and to refer therein to the Case Law on the subject and
10 they said that they reiterated their observations in the present case.

In our view the non-explicit reference to the previous remarks and the Case Law does not render the judgment of the Court as lacking in reasoning. In fact the Court after
15 giving fully all relevant facts both pertaining to the offence and the offender, went on to say that it examined the totality of the circumstances and all mitigating factors in the light of the provisions of the Law and the principles governing sentencing and concluded that imprisonment
20 was the appropriate sentence.

As regards the issue of individualization no doubt the Assize Court did really consider as it ought to the personal circumstances of the appellant in addition to those relating to the commission of the offence and acted accordingly.
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This is born out not only from what the Assize Court said in its judgment but also from the fact that the maximum sentence provided by Law is 14 years and the circumstances of carrying the revolver were not such as to
30 make the offence a mere technicality. On the contrary the whole conduct of the appellant did not, but for his personal circumstances merit, in our view, the leniency shown to him by the Assize Court.

This Court has repeatedly and consistently stressed the
35 seriousness of offences relating to the unlawful and unauthorised possession, carrying and use of firearms. The

evil consequences of it and that there should be a general awareness that unless a relentless war is waged against such offenders the protection of the law abiding citizens and the democratic processes of the State will be in constant danger of jeopardy.

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For all the above reasons this appeal is dismissed.

Appeal dismissed.