1986 March 12

[A LOIZOU LORIS, PIKIS JJ]

YIANNOS RENOU ANTONIADES,

Appellant,

v.

THE POLICE.

Respondents

(Criminal Appeal No 4701)

Sentence—Shop-breaking and theft—One year's imprisonment—Three similar offences taken into consideration—Disturbed personality with consequential psychological problems—In the circumstances the sentence was not excessive

The appellant was sentenced by the trial Court to one year's imprisonment for the commission of an offence of shop-breaking and theft Property worth £11,247 was stolen The bigger part was recovered, but a sizeable portion of it worth £3,201 was appropriated by the appellant In passing sentence the trial Court took into consideration three similar offences

The sole ground of the appeal is that the sentence is manifestly excessive In arguing the appellant's case his counsel invoked the disturbed personality of the accused and the psychological problems associated with it

Held, dismissing the appeal (1) The task of this Court is to review and not to assess, the sentence There was no failure on the part of the trial Court to individualise the sentence to the extent warranted in the circumstances

(2) For this Court to interfere on the ground that the sentence is manifestly excessive, the excess must surface as an objective fact

(3) In this case not only this Court has not been per

satisfied that the sentence is excessive, but rather feels that it is on the whole a lenient one.

Appeal dismissed

Cases referred to:

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

Koukos v. *The Police* (1986) 2 C.L.R. 1.

Appeal against sentence.

Appeal against sentence by Yiannos Renou Antoniades who was convicted on the 28th November, 1985 at the District Court of Nicosia (Criminal Case No. 23034/85) on one count of the offence of shop-breaking and theft contrary to sections 255, 294(a) and 291 of the Criminal Code, Cap. 154 and was sentenced by Kronides, S.D.J. to twelve months' imprisonment.

A. S. Angelides, for the appellant.

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

A. LOIZOU J.: We find unnecessary to call upon counsel for the respondents to reply. The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: This is an appeal against a sentence of one year's imprisonment for the commission of an offence of shop-breaking and theft. At the request of the accused three similar offences were taken into consideration in passing sentence. The gravity of the offences was further compounded by the magnitude of the property stolen and the planning involved in the perpetration and commission of the offences. Property worth £11,247 (Eleven Thousand Two Hundred and Forty seven Pounds) was stolen. Fortunately, the bigger part of it was recovered; but a sizeable portion of it was appropriated by the appellant, notably property worth £3.201 (Three Thousand Two Hundred and One Pounds).

Counsel did not doubt the gravity of the offences or their prevalence, either before the trial Court or before us.

Shop-breaking and theft have assumed proportions of a social evil. Before this challenge to law and order Courts cannot remain passive or inactive. Correspondingly, severe sentences must be imposed to protect society from this menace. The effectiveness of the law depends to a large extent on the choice of appropriate punishments in different areas of law-breaking.

The sole ground upon which the appeal is taken is that it is manifestly excessive. For the Court to interfere on this ground the excess must surface as an objective fact, as indicated in *Philippou* v. *The Republic*[1], a case cited by counsel in support of his appeal. Our task on appeal is to review the sentence and not to assess it; the assessment of sentence is the province of the trial Court. The submission is that the sentence is excessive in view of the disturbed personality of the accused and psychological problems associated with it. These and other factors relevant to the person of the accused were duly taken into account by the trial Court in the context of the balancing process of imposing a sentence befitting the crime as well as the accused. There was no failure on the part of the Court to individualise sentence to the extent warranted in the circumstances. Only last week in *Koukos* v. *The Police*[2], we pronounced a sentence of nine months' imprisonment imposed on a youth of nineteen for the commission of similar offences as correct in principle. And we took this decision notwithstanding his clean record and the lesser gravity of the offences measured from the viewpoint of the property stolen. In that case, only property worth about £70.- (Seventy Pounds) was stolen. That we directed the suspension of the sentence in the interest of parity, in view of the suspension of a prison sentence on a coaccused does not reduce the force of the sentencing principle involved, that in face of the prevalence of offences of house-breaking, shop-breaking and theft, a sentence of imprisonment may be imposed notwithstanding the clean record of the accused and other extenuating factors. The duty to individualise sentence should not lead to the neutralisation of the effe-

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[1] (1983) 2 C.L.R. 245, 250.

[2] (1986) 2 C.L.R. 1.

ctiveness of the law. In upholding the sentence in this case we have not overlooked there are facilities available in prison for the treatment of the accused; and have no doubt prison Authorities will render every assistance possible in this respect. At the end of the day, not only we are not persuaded that the sentence is in any sense excessive but rather feel it is on the whole lenient. There is no room whatever for interfering with it. The appeal is consequently dismissed.

In the result the appeal is dismissed.

Appeal dismissed.