

1985 May 27

[TRIANAFYLIDIS P PIKIS KOURRIS JJ]

SIDERIS GEORGHIOU ISIDOROU,

Appellant,

v

THE REPUBLIC,

Respondent

(Criminal Appeal No 4623)

Sentence — Failure to enlist in the National Guard — Appellant, a «Jehovah witness» serving an earlier sentence of 4 months' imprisonment for a similar offence — Nine months' imprisonment — Upheld

5 The appellant committed the offence in question, because he is a «Jehovah's witness» and in view of this he insists that he is conscience bound not to do military service

It must be noted that at the time of the passing of the aforesaid sentence the appellant was serving four months' imprisonment for a similar offence

10 Held dismissing the appeal against sentence *Pitsilides v The Republic* (1983) 2 C L R 374 dispelled any doubts about the constitutionality of the enforcement of compulsory military service in a case such as this one

(2) In the circumstances it is not possible to interfere with the sentence

Appeal dismissed

Cases referred to

15 *Loizides v The Republic* (1983) 2 C L R 140

Pitsilides v The Republic (1983) 2 C L R 374

Appeal against sentence.

20 Appeal against sentence by Sideris Georghiou Isidorou who was convicted on the 22nd February 1985 at the Military Court of Nicosia (Case No 10/85) on one count of the offence of failing to enlist for service in the National Guard contrary to section 22(a) of the National Guard Law, 1964 (Law No 20 of 1964) and was sentenced to nine months' imprisonment

Appellant appeared in person.

P. Ioulianou, for the respondent.

TRIANAFYLLIDES P. gave the following judgment of the Court. The appellant has appealed against the sentence of nine months' imprisonment, as from 22 February 1985, that was passed upon him for the offence of failing to enlist for service in the National Guard as a reservist.

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The appellant committed the offence in question because he is a «Jehovah's witness» and in view of this he insists that he is conscience-bound not to do military service.

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We have heard today submissions regarding the personal and family circumstances of the appellant and we have been asked, in view of such circumstances, to hold that the sentence passed upon him is manifestly excessive.

On the other hand there remains the stark fact that at the time when the appellant was sentenced on this occasion to nine months' imprisonment he was in prison serving an earlier sentence of four months' imprisonment, as from 7 January 1985, for a similar offence and yet he has not even till now made up his mind to undertake that he is going to fulfil his obligations as a reservist in the National Guard.

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By the case-law of this Court there has already been dealt with extensively the proper approach to a case such as the present one from the point of view of the assessment of sentence. Thus, in, for example, *Lozides v. The Republic* (1983) 2 C.L.R. 140, it has been held that a sentence of twelve months' imprisonment for an offence of this nature is not excessive.

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Also, by *Pitsillides v. The Republic* (1983) 2 C.L.R. 374, there were dispelled any doubts about the constitutionality of the enforcement of compulsory military service in a case such as this one.

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In the light of all the foregoing we have to hold that it is not possible to intervene in favour of the appellant by reducing the sentence that was passed upon him and, therefore, this appeal cannot succeed.

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In concluding we would like to observe that inasmuch as it has not been ordained by the Military Court that the sentence against which the present appeal has been made will run as from the

expiry of the sentences of four months' imprisonment which was passed earlier upon the appellant it follows that such sentence and the present one will run concurrently, with the result that the appellant will be discharged as soon as he has served the sentence
5 of nine months' imprisonment as from 22 February 1985.

In the result this appeal fails and it is dismissed accordingly.

Appeal dismissed.