

Litigation - Cyprus

Supreme Court confirms sentencing principles

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Introduction

A recent criminal appeal⁽¹⁾ before the Supreme Court outlines the principles to be followed in sentencing offenders, particularly in terms of relating the sentence to the gravity of the offence. Kyriakos Tsivikou, together with his friend Asimoglou, had been convicted of "carrying arms to terrorise" under Section 80 of the Criminal Code, which provides that any person who carries any offensive arm or weapon in public in such a manner as to cause terror in any person is guilty of a misdemeanour, and is liable to imprisonment for two years. Tsivikou was also convicted of common assault, contrary to Section 242 of the Criminal Code. A prison sentence of 45 days was imposed on Tsivikou and Asimoglou for the joint offence, plus 45 days on Tsivikou for common assault.

Tsivikou initially appealed both the conviction and the sentence, but subsequently limited the appeal to the 45-day sentence, for both charges of bearing a weapon and common assault.

Facts

Tsivikou, claiming that a group of individuals were trespassing on his property, confronted them and called his co-defendant, Asimoglou, to the scene. Asimoglou appeared with a weapon. As the trespassers left, Tsivikou attempted to strike one of them but failed, as he had closed his car window. Tsivikou then pursued the trespasser's car for 22 kilometres. Once the defendants caught up with the car, they signalled for it to stop and Asimoglou took the weapon and approached the car with Tsivikou. Tsivikou, realising the fear that was being caused to the people in the car, asked Asimoglou to return the weapon to his vehicle.

Decision

The court considered Tsivikou's behaviour unacceptable and condemned it. It considered a prison sentence to be appropriate: any lesser sentence would not have served the purpose of sentencing, which is not only to punish the offender, but also to deter others from similar behaviour.

The court noted that in a 2008 appeal,⁽²⁾ a prison sentence of six months for the offence of carrying a weapon in contravention of Section 80 was upheld. The facts were more serious than those in the case at hand, but the sentence of imprisonment was not questioned by the court.

The court also agreed with the length of the sentence, since Tsivikou had a clean criminal record and asked Asimoglou to return the weapon to the car. The offence carries a sentence of up to two years' imprisonment. Therefore, the 45-day sentence demonstrates that the court took Tsivikou's mitigating circumstances into account.

However, the court believed that the two offences committed did not merit equal punishment. The offence of carrying a weapon, after a pursuit of 22 kilometres, was clearly more serious than that of common assault. Further, while Tsivikou undoubtedly attempted to strike the victim, he did not succeed in doing so, but struck the window of his vehicle. The court considered that a custodial sentence for the offence of common assault was clearly unjustified in light of the facts of the case. A monetary fine would have been more appropriate.

The court therefore set aside the prison sentence for common assault, but upheld the sentence for carrying a weapon to create terror. Given that Tsivikou had already served the prison sentence for the latter offence, no further sentence was imposed for the assault.

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Endnotes

⁽¹⁾ *Kyriakos Tsivikou v Police* - Criminal Appeal 230/2012.

⁽²⁾ *Vak v The Republic of Cyprus* (2008) 2 AAD 854

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