



Mas Idayat Bin Hj Mohd Ali Safar

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 45 of 2013)**

**Steven Chong, J.
12 April 2014**

Criminal Law – Sentence – Consuming methylamphetamine – Prior convictions –
Minimum sentence – Whether to order probation instead of imposing sentence.

Mr. Paul Foo and Madam Rokiah Swed (M/S Abas Serudin & Partners) for the Appellant.
PO Ms Yvonne Lim for the Public Prosecutor/Respondent.

Cases cited:

Mohd Rosdy Bin Abdullah v Public Prosecutor [2001] 1 JCBD 186.

Public Prosecutor v Mohd Rosdy Bin Abdullah [2000] 2 JCBD 331.

Steven Chong, J.:

Background

On 27 November 2013 in the Magistrate's Court the defendant pleaded guilty to consuming methylamphetamine contrary to section 6(b) of the Misuse of Drugs Act.

Magistrate Harnita Zelda Skinner sentenced the defendant to 3 years and 6 months' imprisonment.

This is an appeal by the defendant against that sentence.



Previous convictions

The present offence was committed on 24 November 2011. The defendant was previously convicted of drug consumption in contravention of section 6(b) of the Misuse of Drugs Act in 1999 and 2001. In respect of the 1999 offence the defendant was sentenced to a fine of \$2,000. As to the 2001 offence the defendant was sentenced to 3 years' imprisonment.

In light of the defendant's prior convictions the Magistrate was obliged to impose a minimum sentence of 3 years' imprisonment pursuant to section 29(3A) of the Misuse of Drugs Act.

Grounds of Appeal

Mr. Foo on behalf of the defendant submits that notwithstanding his two previous convictions for drug consumption the Magistrate, instead of imposing a sentence of imprisonment, ought to have considered making a probation order under section 5(a) of the Offenders (Probation and Community Service) Order, 2006, which states:

"Where a court before which an offender is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to do so, it may, instead of sentencing him, make a probation order requiring him to be placed under the supervision of a probation officer or a volunteer probation officer for a probation period of not less than 6 months and not more than 3 years."

The defendant is aged 41 and he has a wife and six children. He worked as a salesman in G.H.K. Motors from March 2013 but lost his employment upon conviction. G.H.K. Motors says the defendant is *"hardworking and responsible"* and is prepared to re-employ him.

Mr. Foo argues that the following factors operate in favour of a probation order as opposed to a sentence of imprisonment:

- (1) The defendant pleaded guilty at the first opportunity.
- (2) The defendant's previous convictions occurred more than 10 years ago.



- (3) The defendant's relapse into drug consumption was due to the "*rigidity and constraints of daily living commitments and the stresses*" of providing for six children.
- (4) The defendant has a job waiting for him.

I will consider these factors in turn.

Guilty plea

True, the defendant pleaded guilty without hesitation and this is to his credit. But, in itself, this is no basis for ordering probation and not passing a sentence of imprisonment.

Gap between convictions

The gap of over 10 years between the present conviction and the two prior convictions is also not, in itself, sufficient to justify the exercise of the discretion to order probation in lieu of imposing a sentence of imprisonment: *Mohd Rosdy Bin Abdullah v Public Prosecutor* [2001] 1 JCBD 186.

Reason for relapse

Stress cannot be used as an excuse to indulge in drug abuse and therefore this factor does not provide any foundation to exercise the discretion to order probation in the defendant's favour. There are perfectly lawful and generally accepted means of relieving the stresses of daily life without resorting to taking drugs.

Employment

The employer's willingness to re-employ the defendant is commendable and it is heartening to know he will have employment upon his release from prison. Again, in itself, this is not a sufficient ground for ordering probation.

Objective of deterrence

In my view those factors considered individually and in totality do not justify the making of a probation order.



A sentence of 3 years and 6 months imprisonment is undoubtedly severe. The court is of course anxious about the welfare of the defendant's family as this sentence will cause hardship to them. However, the objective of the mandatory minimum sentence of 3 years' imprisonment which the court is required to impose on a repeat drug offender must be borne in mind: it is to provide a strong deterrence to the abuse of controlled drugs: *Public Prosecutor v Mohd Rosdy Bin Abdullah* [2000] 2 JCBD 331.

The public interest in discouraging drug abuse by the imposition of a 3 year minimum sentence on a repeat drug offender militates against the exercise of the discretion to order probation unless there are exceptional circumstances. There is none in the present case.

Considering the defendant has a record of two prior convictions for drug consumption and he was sentenced to 3 years' imprisonment on the last one, the Magistrate was right to pass a sentence of 3 years and 6 months.

Conclusion

For the reasons I have given the appeal is dismissed.

DATO PADUKA STEVEN CHONG

Judge, High Court