

Awang Mohammad Japar Bin Haji Mahmuddin

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 4 of 2014)**

Pg Hjh Rostaina Pg Hj Duraman, J.C.
8th December, 2014

Criminal law – Appeal against sentence – Consuming of Methylamphetamine – Class A controlled drug – Contrary to section 6(b) of the Misuse of Drugs Act (Cap 27) – second or subsequent offender – section 29(3A) of the Misuse of Drugs Act.

Fact:

The appellant was charged and pleaded not guilty to consuming Methylamphetamine, a Class A controlled drug, contrary to section 6(b) of the Misuse of Drugs Act (Cap 27). He had a previous conviction for a similar offence. The Magistrate sentenced the appellant to 4 years' imprisonment. The appellant appealed against sentence.

Held:

- 1. The enhanced punishment under section 29(3A) is meant for those who deliberately acted in defiance of the law and repeated the offence after having been convicted of the same.**
- 2. On a plea of guilty to a section 6(b) offence by a second or subsequent offender the sentence is usually the statutory minimum of 3 years' imprisonment and if convicted after a trial the sentence would often be at least 4 years' imprisonment. *Abdul Latif bin Hj Ismail v Public Prosecutor (2000) II JCBD 115 applied.***
- 3. Magistrates have unfettered discretion in sentencing. That discretion, however, must be exercised judiciously. There should be consistency in sentences where there was a recurring pattern of common factual situation.**
- 4. In the instant case, the sentence of 4 years' imprisonment was clearly in line with the normal sentence passed for such offence where the defendant disputes a charge of consumption and a trial was held.**

5. In some cases, for example when a defendant has a number of previous convictions, or the controlled drug concerned is particularly dangerous, an even longer term may be properly imposed.

6. Appeal is dismissed.

Appellant in Person.

DPP Muhammad Abdul Raafe' bin Hj Ibrahim for Public Prosecutor.

Cases referred to:

Abdul Latif bin Hj Ismail v Public Prosecutor (2000) II JCBD 115

Jumat bin Abdullah v Public Prosecutor (Criminal Appeal No. 14 of 2001)

Pg Idris bin Hj Chuchu v Public Prosecutor (Criminal Appeal No.125 of 2001)

Pg Hjh Rostaina, JC:

On the 17 December, 2012, in the Magistrates' Court, Awang Mohammad Japar bin Hj Mahmuiddin, the appellant pleaded not guilty to consuming Methylamphetamine, a Class A controlled drug contrary to section 6(b) of the MDA.

After a hearing was conducted the Magistrate convicted him and sentenced the appellant to 4 years' imprisonment. The appellant now appeals against sentence.

The present offence was committed on 13th January, 2010. The appellant has a previous conviction for a similar offence in 2002 and he was only convicted in 2005. For being a first offender then, a fine of \$1,000 was imposed.

Section 29(3A) of the Misuse of Drugs Act provided for a minimum sentence of 3 years' imprisonment for a second or subsequent conviction under section 6(b).

The Deputy Public Prosecutor referred to the case of *Abdul Latif bin Hj Ismail v Public Prosecutor* (2000) II JCBD 115, provides a useful guide to Magistrates in the approach to be taken in sentencing in relation to section 6(b) offences. There, Roberts, C.J., said at page 116:

"For a second or subsequent offence against section 6(b) of Cap.27, a Magistrate is obliged to pass a sentence of not less than 3 years' imprisonment in the case of a Class A controlled drug, Methylamphetamine, according to the first schedule to Cap.27.

It is the usual practice for a Magistrate to impose on a defendant who pleads guilty the prescribed minimum sentence for consumption of a controlled drug on a second or subsequent conviction – i.e. 3 years.

If the defendant disputes a charge of consumption and pleads not guilty to it, it is normal if he is convicted for a longer sentence to be imposed on the defendant, in the case of a second or subsequent conviction. This is often at least 4 years' imprisonment.

In some cases, for example when a defendant has a number of previous convictions, or the controlled drug concerned is particularly dangerous, an even longer term may be properly imposed."

Magistrates, of course, have unfettered discretion in sentencing. That discretion, however, must be exercised judiciously. There should be consistency in sentences where there was a recurring pattern of common factual situation.

The sentence of 4 years' imprisonment was clearly in line with the normal sentence passed for such offences where the defendant disputed a charge of consumption and a trial was held.

Before me, the appellant had asked for a lenient sentence to be imposed and he had referred to 3 cases where the defendants were sentenced to less than 4 years.

However, in light of the appellant's record of previous conviction under section 6(b), Misuse of Drugs Act and the fact he had pleaded not guilty to a charge of consumption. In the circumstances, there is no basis to interfere with the sentence imposed.

The appeal is dismissed.

PG HJH ROSTAINA PG HJ DURAMAN
Judicial Commissioner