

PUBLIC PROSECUTOR

AND

CHRISMAN BIN YAYAH

**(High Court of Brunei Darussalam)
(Criminal Trial No 13 of 2013)**

Hairol Arni Majid, J.
11th November 2014

*Criminal law – Section 3A of MDA CAP 27 – Possession for the purpose of
trafficking – Guilty plea - Appropriate sentence.*

DPP Muhammad Abdul Raafe' bin Haji Ibrahim for Public Prosecutor.
Mr. Hj Mohamad Daud bin Hj Ismail (M/S Daud Ismail and Co) for Defendant.

Case cited in the Judgment:

Public Prosecutor v Awg Roslan bin Mohd Yunus [2005] 2 JCBD 175

JUDGMENT

Hairol Arni Majid, J.:

The defendants pleaded guilty to a charge of possession for the purpose of trafficking a total of 30.2188 grams of Methamphetamine, an offence under Section 3A of the Misuse of Drugs Act Chapter 27. The defendant admits to the statement of facts tendered before the court which are in the following terms.

Statement of Facts

1. The defendant is a 39 years old Malaysia National and worked as a Fire Extinguisher Technician in Miri Malaysia prior to his arrest.
2. On the 16th of February 2013 at about 1645 hours NCB Officers from NCB Kuala Belait conducted an operation in the vicinity of Milimewah Supermarket in Kuala Belait. During the operation the defendant was

arrested by NO Yahya and ANO Zaini on suspicion of being involved in drug related activities.

3. Upon his arrest the defendant was asked if he had anything in his possession in relation to drugs that he wanted to hand over. The defendant then proceeded to hand over his wallet (later labeled as exhibit 'E1') to ANO Sarif, upon examination of the wallet ANO Sarif found, one clear plastic packet with both ends sealed containing crystalline substance believed to be drugs, this exhibit was seized by the NCB and labeled E1 (a).
4. A car key was also found on the defendant (seized and labeled E2), which after investigation was found to belong to a black Perodua Viva car with registration No. QMN 6913 parked close to where the defendant was arrested.
5. Further investigation revealed that the said car was the car that the defendant had used to enter Brunei Darussalam not long before the defendant was arrested (on the same day). The defendant also revealed that he had travelled alone into Brunei Darussalam from Miri, Malaysia.
6. A search of the car was then conducted by NCB Officers. NCB Officers who search the car found items believed to be controlled drugs in the glove compartment of the car. The items that were found labeled and seized are:
 - *One blue plastic packet labeled head and shoulders, taped (labeled as E3), containing one clear sealed plastic packet containing crystalline substance believed to be drugs (labeled E3(a)), and,*
 - *One blue plastic packet labeled head and shoulders, taped (labeled as E4), containing one clear sealed plastic packet containing crystalline substance believed to be drugs (labeled E4(a)).*
7. Once the investigation at the scene was completed the defendant and the exhibits were then taken back to NCB Kuala Belait Office for further investigation.
8. The exhibits E1 (a), E3 (a) and E4 (a) were subsequently sent to the Department of Scientific Services for analysis. The analysis was conducted by Lim Swee Chin, whom upon completion of the analysis published a analyst report with reference number KMN/047/2013 to report his analysis, the analyst results were:
 - *E1 (a) was 0.2606 grams of Methylamphetamine contained in a total of 0.4485 grams of crystalline substances.*

- *E3 (a) was 14.3634 grams of Methylamphetamine contained in a total of 22.9558 grams of crystalline substances.*
- *E4 (a) was 15.5948 grams of Methylamphetamine contained in a total of 24.6047 grams of crystalline substances.*

(total of 30.2188 grams of Methylamphetamine)

9. Further investigation was conducted and the defendant's ordinary statement caution statement was recorded.
10. The defendant admits that he was in possession of the drugs (E1 (a), E3 (a) and E4 (a)) and had brought the drugs in from Miri, Malaysia in order to deliver the said drugs to a person he was asked to meet in the vicinity of Milimewah Supermarket, Kuala Belait Town.
11. On record the defendant is a first offender under the Misuse of drugs act.

Mr Daud Ismail appearing for the defendant in mitigation submits that the defendant is 39 years old married with 2 sons. He was formerly employed as a technician fire extinguisher before his arrest and was awarded in 2012 an award for outstanding service by his firm. As well he received a certificate of appreciation for "Honesty Awards" during his earlier employment with Holiday Inn Hotel Miri. Mr. Daud said the defendant succumbed to committing the offence after, a promise of payment of only B\$500 to deliver the drug to a person in Brunei. As well, he submits that there had been delay in the disposal of this case.

In passing sentence I have taken into consideration of the facts that the defendant had pleaded guilty as well, the fact that he's a first offender and prior to this has a clean record. As regards to the suggestion that there had been delayed in the disposal of this case, I entirely disagree. The defendant was charged on the 7th March 2013. The hearing scheduled for February 2014 was abandoned after the defendant's representation to the Public Prosecutor was rejected and trial date was re scheduled in October 2014. Further negotiation prior to the start of the hearing resulted in this guilty plea. I am satisfied given the rescheduling of the trial dates, the adjournments were justified and do not reflect unnecessary delay and were not attributed to by any parties.

I note of the traffic sentence guideline outlines in the case of *Public Prosecutor v Awg Roslan bin Mohd Yunus* [2005] 2 JCBD 175 as set out below:

"If the quantity does not exceed-

10 grammes – 5 years and 5 strokes;

If it over 10 and below 20 grammes – between 5 years and 5 strokes and 10 years and 8 strokes;

*If it is 20 grammes or over and below 30 grammes – between 10 years and 8 strokes and 15 years and 10 strokes;
If it is 30 grammes or over and below 40 grammes – between 15 years and 10 strokes and 20 years and 12 strokes”*

Given that the traffic above suggest a pattern of progressive sentences to be imposed after trial and the fact that the defendant is convicted of possessing 30.2188 grammes of methylamphetamine, it would appear that the sentence would fall in the lowest range of 30 grammes namely between 15 years and 10 strokes and 20 years and 12 strokes.

Taking into account of his guilty plea which warrants an obvious discount in sentence, I believe a sentence of 10 years imprisonment and 8 strokes of whipping is appropriate in the circumstances of the case. The sentence is to take effect from the date of his remand. I so duly ordered.

DATO PADUKA HAIROL ARNI MAJID
Judge, High Court