

**Haji Mohd Asmawi Bin Haji Zulkifli**  
AND  
**Public Prosecutor**

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**(Court of Appeal of Brunei Darussalam)**  
**(Criminal Motion No 15 of 2024)**

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Steven Chong, C.J., Lunn and Sir Peter Gross, JJA  
**16<sup>th</sup> June 2025.**

*Criminal law – Criminal breach of trust by a public servant - Sentence*

Applicant In Person.

DPP Pg Hj Nor'Azmeena Pg Hj Mohiddin for the Public Prosecutor.

**Cases cited:**

*Public Prosecutor v Jublee Bin Hj Gapar* [2004] BLR 215

*Public Prosecutor v Purwanti Jong* [Criminal Appeal No.2 of 2016]

*Public Prosecutor v Hajah Kasmah Binti Hj Hashim* [Intermediate Court Criminal Trial No. 1 of 2009]

*Amiruddin Bin Haji Junaidi v Public Prosecutor* [Criminal Motion No. 2 of 2017]

*R v Basil Mortimer Bernard* [1997, 1 Criminal Appeal R (S) 135]

**Steven Chong, C.J.:**

Introduction

1. On 29 April 2024, in the Intermediate Court, the Applicant was convicted following a full trial for the offence of criminal breach of trust by a public servant, an offence contrary to section 409 of the Penal Code. Upon conviction, the Applicant was sentenced by Judge Hazarena Dato POKSJ DP Hj Hurairah to a term of 3 years' imprisonment.
2. The Applicant now seeks leave to appeal out of time against the sentence imposed.

The facts

3. Briefly stated, the relevant facts are as follows. On 6 August 2016, the Applicant, then serving as an Assistant Narcotics Officer with the Narcotics Control Bureau (NCB), was the investigating officer in a drug-related case. In the course of his duties, he was

entrusted with the custody of three exhibits: Exhibit E5, cash amounting to \$561; Exhibit E7, cash amounting to \$514; and Exhibit E9, a Samsung mobile phone.

4. These exhibits were required to be securely deposited in the strong room of the Tutong NCB. However, instead of doing so, the Applicant misappropriated the said exhibits.

#### The sentence

5. In determining the appropriate sentence, the Judge considered several authorities, including *Public Prosecutor v Jublee Bin Hj Gapar* [2004] BLR 215, in which a clerk from the Civil Aviation Department pleaded guilty to criminal breach of trust involving the sum of \$14,090.50 and was sentenced to 2 years' imprisonment.
6. Before the court below, the Applicant urged that a fine be imposed on three grounds: first, that he had made full restitution; second, that he suffered from "*medical complications*" following brain surgery and was no longer capable of performing heavy work; and third, that his family comprising his wife, four children and an elderly mother are dependent on him.
7. The Judge, however, was of the view that the restitution carried little mitigating weight, as the misappropriation had compromised the integrity of the investigation. Additionally, the Judge was not persuaded that the Applicant's medical condition was such as to justify the exercise of judicial mercy.
8. The Applicant was accordingly sentenced to 3 years' imprisonment.

#### The appeal

9. The Applicant seeks a reduction in sentence primarily on the basis of his medical condition. He claims to suffer from multiple health issues and asserts that he requires urgent surgical intervention followed by intensive post-operative care. According to the Applicant, he was admitted to hospital on 5 May 2025 for treatment of an infection and was subsequently discharged on 3 June 2025. The details of his medical condition will be considered in due course when addressing the medical report.
10. The Applicant further submits that his continued incarceration would cause hardship to his family as they depend on him for support. He also raises concerns for his personal safety in prison, alleging that he has been subjected to verbal abuse and threats by other inmates, particularly drug offenders.
11. The Prosecution argues that the Applicant's medical condition and family circumstances do not warrant a reduction in sentence. It maintains that the sentence imposed is appropriate and cannot be said to be manifestly excessive. Accordingly, the Prosecution submits that the sentence should be upheld.

## Decision

12. In *Public Prosecutor v Purwanti Jong* [Criminal Appeal No.22 of 2016], which involved an offence of criminal breach of trust by an employee under section 408 of the Penal Code, this Court affirmed the view expressed in *Public Prosecutor v Hajah Kasmah Binti Hj Hashim* [Intermediate Court Criminal Trial No. 1 of 2009], that the prevailing sentencing trend is to impose a custodial term of 2 years' imprisonment where the defendant has pleaded guilty, the amount misappropriated is small, and no restitution has been made.
13. In the present case, the sentence imposed falls within the appropriate range for an offence of this nature and reflects the seriousness of the conduct involved. While the Applicant's difficult family circumstances are acknowledged, they do not amount to exceptional hardship so as to justify a reduction in sentence.
14. As for the Applicant's concerns regarding his personal safety while in prison custody, we note that the Prosecution has confirmed, upon inquiry with the prison authorities, that the Applicant was subjected to verbal threats by fellow inmates upon his initial admission. However, it is further confirmed that such incidents have since ceased. In response to these concerns, the prison authorities have taken precautionary measures by placing the Applicant in a single-occupancy cell to minimize contact with other inmates.
15. We are satisfied that appropriate and adequate steps have been taken to address and ensure the Applicant's safety during the course of his incarceration.
16. The principal issue for determination in this application is whether the Applicant's medical condition justifies a reduction in sentence as an act of judicial mercy. In *Amiruddin Bin Haji Junaidi v Public Prosecutor* [Criminal Motion No. 2 of 2017], this Court adopted the approach of the English Court of Appeal in *R v Basil Mortimer Bernard* [1997, 1 Criminal Appeal R (S) 135, and endorsed the following guiding principles: (a) a serious medical condition, even if difficult to treat in prison, does not automatically entitle an offender to a lesser sentence than would otherwise be appropriate; and (b) an offender's serious medical condition may, in the exceptional circumstances of a particular case, justify a lesser sentence as an act of mercy, rather than as a matter of general principle.
17. The Court has been provided with a medical report from the Maraburong Prison Health Clinic concerning the Applicant's medical condition. The Applicant, aged 43, has a history of hypertension and diabetes, with previously noted poor adherence to medication. In June 2023, he was referred to the Brunei Neuroscience, Stroke and

Rehabilitation Centre (BNSRC) to rule out meningoencephalitis. Imaging revealed a hypodense lesion in the spleen, and subsequent blood cultures tested positive for *Burkholderia pseudomallei*. He was then admitted to RIPAS Hospital for further management.

18. During his hospitalization, the Applicant sustained a fall in the toilet, resulting in a subdural haematoma. He underwent two surgical procedures: a right-sided burr hole for subdural hygroma on 25 June 2023, and a craniotomy with evacuation of the subdural haematoma on 26 June 2023. Post-operatively, he developed seizures and was commenced on anti-seizure medication.
19. In January 2024, the Applicant was re-admitted to BNSRC following a focal seizure, attributed to missed medication. Imaging at that time revealed chronic venous thrombosis with partial recanalisation of the superior sagittal sinus. He has since experienced further seizures, also due to interruptions in medication supply. At his most recent review by the neurosurgery team in November 2024, he was reported to be clinically stable and was scheduled for a cranioplasty,
20. The medical report does not establish that the Applicant's condition is incapable of being adequately managed within the prison system, nor does it indicate that he is suffering from a terminal illness. In the circumstances, we are in agreement with the Judge's assessment that the Applicant's medical condition does not meet the high threshold of exceptionality necessary to warrant the exercise of judicial mercy.
21. In the absence of any arguable case against the sentence imposed, the application for leave to appeal is accordingly refused.

**STEVEN CHONG, C.J.**

**LUNN, J.A.**

**SIR PETER GROSS, J.A.**