

Muhammad Nurilham Bin Mohammad Nasri
AND
Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 18 of 2024)

Steven Chong, C.J., Lunn and Woolley, JJA
17th June 2025.

Criminal law – Housebreaking with intent to commit theft – Custodial sentence to be backdated to date of initial remand

Applicant In Person.
DPP Hjh Siti Mu'izzah Hj Sabli for the Public Prosecutor.

Cases cited:

Muhammad Izzat Bin Mohd Yunus v Public Prosecutor [Criminal Motion No. 31 of 2019]
Abdul Rashid Bin Hj Libut v Public Prosecutor [Criminal Appeal No. 20 of 2020]

Steven Chong, C.J.:

Introduction

1. The Applicant was jointly charged, alongside a co-accused, with the offence of housebreaking with intent to commit theft, an offence under section 454 of the Penal Code. The charge was brought before the Intermediate Court on 12 January 2022.
2. The co-accused pleaded guilty and was sentenced to 3 years' imprisonment and 2 strokes.
3. The Applicant, however, claimed trial. Following the conclusion of the trial, he was found guilty on 28 August 2023. He was sentenced to a term of 3 years and 6 months' imprisonment and 3 strokes. The custodial sentence was ordered to commence from the date of conviction.
4. The Applicant now seeks an extension of time within which to file an appeal against the sentence imposed.

The facts

5. On 4 January 2022, between the hours of 10.00 am and 11.00 am, the Applicant and his co-accused proceeded to a residential property in Kampong Madang, in a vehicle owned and driven by the Applicant. Upon arrival at the location, the co-accused alighted from the vehicle and unlawfully entered the compound of the said house by climbing over the gate, while the Applicant remained in the vehicle.
6. The co-accused gained entry into the house through an unsecured kitchen window. Once inside, he conducted a search of various rooms and proceeded to steal numerous items, including a Hitachi metal grinder, a guitar, a drill tool set, a Dell laptop, a JBL speaker, cash in the sum of \$45, a Samsung mobile phone, a pair of jeans, a backpack, a phone charger, a gas cylinder, and a pack of Indomie.
7. The co-accused subsequently passed the stolen items to the Applicant over the gate, and the Applicant assisted in loading them into the vehicle. Both individuals then departed the scene with the stolen property.
8. At approximately 1.00 pm on the same day, the Applicant and his co-accused proceeded to M.M.YAS Sdn. Bhd. in Gadong, where the Applicant sold the stolen Dell laptop together with its charger for the sum of \$30. A portion of the proceeds was used to purchase petrol and food.
9. Later that day, at around 5.50 pm, the owner of the property discovered that the house had been broken into and several items were missing. A police report was promptly lodged.
10. Subsequent police investigations identified the involvement of both the Applicant and his co-accused culminating in their arrest. During the course of the investigation, the co-accused admitted to having committed the housebreaking and theft, while the Applicant acknowledged his role in assisting with the transportation and disposal of the stolen items.
11. Only a portion of the stolen property was recovered and returned to the rightful owners. Among the items not recovered were a Samsung mobile phone and a gas cylinder. The total value of the stolen property was estimated at \$1,335.

Previous convictions

12. The Applicant has a sustained history of criminal conduct spanning from 2013 to 2018. His antecedents include seven prior convictions for theft-related offences, in addition to one conviction for criminal intimidation and another for outraging the modesty of a woman.

The sentence

13. In determining the appropriate sentence to be imposed on the Applicant, the Judge considered relevant sentencing precedents, including the case of *Muhammad Izzat Bin Mohd Yunus v Public Prosecutor* [Criminal Motion No. 31 of 2019], where a sentence of 33 months' imprisonment and 2 strokes was upheld for a first offender convicted after trial for housebreaking. In that case, this Court observed that individuals who commit housebreaking with intent to steal must expect custodial sentences in the region of at least three years.
14. In the present case, the Judge considered as aggravating factors the Applicant's status as a repeat offender with prior conviction for theft-related offence, and the fact that multiple items were stolen during the commission of the offence. Consequently, a sentence of 3 years and 6 months' imprisonment and 3 strokes was imposed, with the custodial sentence ordered to commence from the date of conviction, i.e. 26 August 2023. The Judge did not provide any reasons for backdating the sentence to that date.

The appeal

15. The Applicant does not dispute the length or severity of the sentences *per se*, but contends that the Judge erred in ordering the sentence to commence from the date of conviction rather than the date of first remand, i.e. 12 January 2022. He submits that he was denied bail throughout the pre-trial period and urges the Court to take into account the hardship caused to his family by his incarceration. The Applicant highlights his responsibility in financially supporting his father, a lorry driver, his mother, a cleaner, and five siblings, particularly in meeting outstanding debts and household expenses.
16. The Prosecution maintains that the sentence imposed is appropriate and consistent with the sentencing benchmarks set by this Court in *Mohammad Izzat*. However, the Prosecution concedes that the Judge should have ordered the sentence to be backdated to the date of first remand. This position is supported by the authority of *Abdul Rashid Bin Hj Libut v Public Prosecutor* [Criminal Appeal No. 20 of 2020], where this Court substituted a sentencing order that took effect from the date of sentencing with one that commenced from the date of remand, recognizing the time already spent in custody pending trial.

Decision

17. Having considered the circumstances of the case, we are satisfied that the custodial sentence imposed is not manifestly excessive. This assessment takes into account that the conviction followed a full trial and that the Applicant has a significant history of theft-related offences spanning an extended period.
18. However, we turn to the issue of the commencement date of the sentence. In light of the Prosecution's concession – which we consider to be properly and rightly made – we are of the view that, in the interest of fairness and consistent with established

sentencing principles, the custodial sentence should be backdated to the date of the Applicant's initial remand.

19. Accordingly, we grant leave to appeal and deem this application for an extension of time to appeal as the substantive appeal itself. The order of the court below is therefore set aside. The appeal is allowed to the extent that the sentence of imprisonment shall commence from the date of the Applicant's first remand. All other aspects of the sentence, including the imposition of strokes, are affirmed.

STEVEN CHONG, C.J.

A handwritten signature in black ink, appearing to be 'S. Chong', written in a cursive style.

LUNN, J.A.

WOOLLEY, J.A.