

Fuad Bin Ibrahim
AND
Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 1 of 2024)

Steven Chong, C.J., Lunn and Woolley, JJA
16th June 2025.

Criminal law – Housebreaking – House-trespass – Theft in a building - Sentence

Applicant In Person.
DPP Ahmad Firdaus Bin Hj Mohammad for the Public Prosecutor.

Cases cited:

Wahid Bin Majid v Public Prosecutor [Criminal Appeal No. 9 of 2014]
Abdul Wakil Bin Samsun Yusra v Public Prosecutor [Criminal Motion No. 35 of 2014]
Public Prosecutor v Mohd Shalan Bin Samat (D1), Mohd Azhim Bin Hj Mohd Rais (D2) [Criminal Appeal No. 6 of 2013]
Mohammad Yusrin Bin Hj Mohammad v Public Prosecutor [Criminal Appeal No. 8 of 2013]
Mohammad Bin Yusof v Public Prosecutor [Criminal Appeal No. 14 of 2018]
N Bin HS v Public Prosecutor [Criminal Appeal No. 2 of 2022]

Steven Chong, C.J.:

Introduction

1. On 29 August 2022, in the Intermediate Court, the Applicant was charged with four offences under the Penal Code. The charges were as follows: housebreaking, contrary to section 454 (1st Charge); gang-robbery, contrary to section 395 (2nd Charge); theft in a building, contrary to section 380 (3rd Charge); and house trespass, contrary to section 451 (4th Charge).
2. The Applicant initially pleaded not guilty to all four charges. However, on 6 September 2023, prior to the commencement of the trial, he changed his plea to guilty in respect of the 1st, 3rd and 4th Charges. He maintained his plea of not guilty to the 2nd Charge, which was subsequently withdrawn by the Prosecution.

3. Following his pleas, the Judge sentenced the Applicant to an aggregate term of 6 years 2 months' imprisonment and 2 strokes.
4. The present application is for leave to appeal out of time against the sentence imposed.

Facts relating to the 1st Charge

5. In respect of the 1st Charge, the facts are as follows. On the morning of 28 January 2021, the Applicant, together with an accomplice, proceeded to a house in Kampong Jangsak with the intention of committing theft. They travelled to the location in the Applicant's Suzuki Vitara. After confirming that the house was unoccupied, they climbed over the perimeter fence, causing damage in the process.
6. Once inside the compound, the Applicant used a broom to displace a CCTV camera positioned at the front door in an attempt to evade detection. He then attempted to unlock the front door using his fingers. Together with his accomplice, he forced the door open, damaging the lock in the process.
7. Upon gaining entry, the Applicant and his accomplice searched the ground floor but found nothing of value. They then proceeded to the upper floor, where they stole an iPhone, a Nintendo Switch, a MacBook Air, and a gold necklace. They exited the premises the same way they had entered, again scaling the fence, and fled the scene in the Applicant's vehicle.
8. Later that afternoon, the homeowner returned and discovered her front door ajar and her house in a state of disarray. Upon reviewing the CCTV footage, she observed two unidentified individuals inside her home and subsequently lodged a police report. She also provided a quotation for repairs to the damaged fence and front door lock, amounting to \$440.
9. The CCTV footage enabled the identification and subsequent arrest of the Applicant. Police investigations led to the recovery of several of the stolen items, including the iPhone, MacBook Air and gold necklace.

Facts relating to the 3rd Charge

10. Turning to the facts concerning the 3rd Charge, on the afternoon of 11 October 2021, the Applicant visited the Kern Café with the initial intention of purchasing food. He entered the kitchen area through the rear entrance, placed an order, and subsequently noticed a black backpack located in the storeroom.

11. Upon inspecting the backpack and discovering an envelope containing cash, the Applicant took the envelope and left the premises without waiting for his food. A waitress, who had initially attended to the Applicant when he placed his order, later returned from preparing the food and found the Applicant missing and her backpack unzipped.
12. A police report was lodged, which subsequently led to the Applicant's arrest. It was established that the envelope contained \$10,500 belonging to the café's owner, intended for the payment of staff salaries and food suppliers. The stolen sum was not recovered.
13. During the proceedings in the court below, when the Statement of Facts was read to the Applicant, he initially disputed the amount stolen, claiming it was only between \$200 and \$300. However, following clarification by the prosecution that the money was intended for the payment of staff salaries and food suppliers, the Applicant agreed that he had stolen the sum of \$10,500, as stated in the 3rd Charge and reflected in the Statement of Facts.

Facts relating to the 4th Charge

14. The 4th Charge concerns an incident which occurred on the night of 24 March 2021. On that occasion, the Applicant, acting in concert with an accomplice, unlawfully broke into a residential property situated at Limau Manis with the intention of committing theft. Access was gained by forcing entry through the back door of the premises.
15. Once inside, the Applicant and his accomplice proceeded to steal various items, including a set of shirt buttons and a wall lamp. At the material time, the house was unoccupied as the homeowner was working offshore.
16. Upon returning to the property on 27 March 2021, the homeowner discovered the break-in and promptly lodged a police report. Subsequent investigations led to the Applicant's arrest. Police inquiries further revealed that, in addition to the shirt buttons and wall lamp, the Applicant had stolen a Tag Heur watch, several bottles of perfume, shoes, television cables, a Samsung remote control, various tools, an external hard drive, a bag and a pair of gloves.
17. Of the stolen items, only the shirt buttons and wall lamp were recovered. The total estimated value of the property stolen was \$4,900.

Previous convictions

18. The Applicant has an extensive criminal antecedent spanning the period from 2007 to 2018. His record includes 21 convictions for theft-related offences, one conviction for drug consumption, and one conviction for resisting arrest. His most recent convictions in 2018 involved three theft-related offences for which he was sentenced to an aggregate term of 3 years' imprisonment and 3 strokes.

The sentence

19. In determining the appropriate sentence, the Judge took guidance from several precedent cases involving comparable offences. These include *Wahid Bin Majid v Public Prosecutor* [Criminal Appeal No. 9 of 2014], concerning an offence under section 454 of the Penal Code, in which a starting point of 3 years' imprisonment reduced to 2 years in recognition of the accused's guilty plea was upheld by this Court. Similarly, in *Abdul Wakil Bin Samsun Yusra v Public Prosecutor* [Criminal Motion No. 35 of 2014], this Court affirmed concurrent sentences of 3 years' imprisonment – likewise reduced to 2 years upon a guilty plea – imposed for three offences under section 451 of the Penal Code. Further reference was made to *Public Prosecutor v Mohd Shalan Bin Samat (D1)*, *Mohd Azhim Bin Hj Mohd Rais (D2)* [Criminal Appeal No. 6 of 2013], involving an offence under section 380 of the Penal Code, where the High Court considered a sentence of 12 months' imprisonment to be appropriate.

20. Having considered these authorities and the specific circumstances of the present case, the Judge adopted a starting point of 3 years' imprisonment for each of the three charges faced by the Applicant. This starting point was then reduced to 2 years' imprisonment per charge to reflect the Applicant's plea of guilt. In respect of the 1st Charge, the Judge further imposed a sentence of 2 strokes. However, she did not specify the number of strokes that would have been imposed had the Applicant elected to contest the charge.

21. The custodial sentences were ordered to run consecutively resulting in an aggregate sentence of 6 years' imprisonment and 2 strokes.

The appeal

22. The Applicant seeks an order for the sentences of imprisonment to be served concurrently rather than consecutively. In support of his appeal, the Applicant raises three main grounds.

23. First, he submits that he is the sole breadwinner for his family, comprising his wife and two young children, who are financially dependent on him. Second, he suffers from a medical condition – hemorrhoids – for which he is scheduled to undergo surgery. Third, he highlights his cooperation with the police following his arrest.
24. The Prosecution, however, maintains that the Judge was correct in directing that the sentences run consecutively, given that the offences in question were distinct and arose from separate transactions. The Prosecution further contends that the overall sentence imposed was neither wrong in principle nor manifestly excessive.

Decision

25. We are satisfied that the individual sentences imposed fall within the established sentencing range for offences of this nature, as supported by the authorities cited by the Judge. Reference may also be made to *Mohammad Yusrin Bin Hj Mohammad v Public Prosecutor* [Criminal Appeal No. 8 of 2013], where this Court held that sentences ranging from 2 to 4 years following trial are appropriate for offences under section 454 of the Penal Code, and that for offences under section 380 of the Penal Code, a sentencing range of 12 months to 2 years is considered proper. Similarly, in *Mohammad Bin Yusof v Public Prosecutor* [Criminal Appeal No. 14 of 2018], this Court affirmed that a sentence of 3 years' imprisonment imposed following conviction after trial for an offence under section 451 of the Penal Code was consistent with established sentencing precedent.
26. The three offences in question were committed against different victims over an extended period of approximately 10 months. The Applicant had ample opportunity for reflection between each incident. In light of this, we find no error in the Judge's decision to impose consecutive sentences.
27. In affording the Applicant a discount of one-third from the starting points taken for sentence, with respect, the Judge was unduly generous to the Applicant. He did not plead guilty at the earliest opportunity. On the contrary, he did not plead guilty to the charges until after the first day set for his trial, namely 30 August 2023. The trial was adjourned at the Applicant's request on 31 August 2023. On 6 September 2023, he pleaded guilty to the charges for which he was sentenced.
28. DPP Ahmad Firdaus had correctly submitted in written submissions that the Applicant was not entitled to a full one-third discount. The Prosecution had interviewed all the witnesses and prepared for trial.

29. As this Court observed in *N Bin HS v Public Prosecutor* [Criminal Appeal No. 2 of 2022], a guilty plea tendered at the door of the trial court, as in the present case, still warrants a reduction in sentence but should not exceed one-tenth.
30. Considering the overall criminality of the offending, the fact that the Applicant did not plead guilty at the earliest opportunity but only on the eve of the trial, and his substantial history of prior convictions for theft-related offences, we are of the view that the total sentence imposed was not manifestly excessive.
31. Accordingly, we find that granting an extension of time to appeal would serve no useful purpose. The application is therefore dismissed.

STEVEN CHONG, C.J.



LUNN, J.A.

WOOLLEY, J.A.