

Public Prosecutor

AND

Awg Roslan Bin Mohd Yunos

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 6 of 2005)

Cons, P.; Power and Mortimer, JJ.A.
21st November, 2005.

Revised tariff for possession of amounts below 40 grammes of Methylamphetamine for the purpose of trafficking made necessary by the Misuse of Drugs Act (Amendment) Order of 2002.

Aldila Bte Hj Mohd Salleh and Syed Azmal Bin Syed Ali (Deputy Public Prosecutors) for the Appellant.

Mr Hj Zul-Sukarla Bin Hj Zul-Kiflie (M/S Zul-Sukarla Law Office) for the Respondent.

Case cited in the Judgment:

PP v Othman Bin Haji Abdullah & Another [2000] 1 B.L.R. 49

Power, J.A.:

In this matter, the Respondent was convicted after trial before Judge Hairolarni in the District Court of possession of 22.8414 grammes of Methylamphetamine for the purpose of trafficking in contravention of section 3A of the Misuse of Drugs Act. He was sentenced to 5 years and 5 strokes.

The Public Prosecutor now appeals against that sentence on the ground that it was manifestly inadequate.

Judge Hairolarni followed the guidelines in *PP v Othman Bin Haji Abdullah & Another* [2000] 1 B.L.R. 49, which sets out an appropriate sentence of 6 years and 6 strokes after trial for an offence involving up to 25 grammes of Methylamphetamine.

The Judge was satisfied that there had been undue delay during the trial due, in part at least, to the fact that leading prosecution counsel had to attend a course abroad.

He would have been entitled to take this matter into account when reducing the sentence by one year and one stroke.

The Public Prosecutor now appeals against that sentence submitting that since the Misuse of Drugs Act (Amendment) Order of 2002 the tariff laid down by the court in *Othman's* case no longer has any application. That tariff was as follows:

“Cap. 27 recognises the seriousness of this offence by prescribing, for unauthorized possession for the purpose of trafficking of a controlled drug containing Methylamphetamine, a minimum sentence of 5 years and 5 strokes and a sentence, for the possession of not less than 90 grams and not more than 250 grams, of a minimum of 20 years and 15 strokes and a maximum of 30 years and 15 strokes. Over 250 grams, the penalty is death.”

It may be of assistance to the Courts to suggest a tariff for the possession of Methylamphetamine, for the propose of trafficking, based on the quantity of this controlled drug found in the possession of the defendant, though other factors may, of course, increase or decrease the actual sentence.

These sentences suggested by this Court would apply after a contested trial, so that there would be a suitable deduction for a plea of guilty.

Since the minimum sentence for unauthorized possession for the purpose of trafficking in Methylamphetamine under section 3A of Cap. 27 is 5 years and 5 strokes, and the minimum for such possession of 90 grams is 20 years and 15 strokes, we suggest a pattern of progressive sentences, as follows –

If the quantity does not exceed 20 grams (the quantity at which a presumption operates under section 15 of Cap. 27) – 5 years and 5 strokes;

If the quantity is 25 grams – 6 years and 6 strokes;

If the quantity is 30 grams – 7 years and 7 strokes;

For every 5 grams over 30 grams, add 1 year and 1 stroke (with a maximum of 15 strokes).

We agree that this was an appropriate tariff having regard to the penalties as they then stood but feel it appropriate to add that we see no good reason to link the amount at which the presumption operates, which is purely an evidential provision, with a tariff dealing with punishment.

The Amendment Order of 2002 stipulates: “Unauthorised possession of controlled drugs for the purpose of trafficking therein, containing such quantity of Methylamphetamine being – (a) not less than 40 grammes and not more than 100 grammes – maximum 30

years and 15 strokes minimum 20 years and 15 strokes (b) more than 100 grammes – death”.

Madam Aldila is clearly right in her submission that the tariff in *Othman's* case no longer has application. The lower range of sentences was formerly for quantities up to 90 grammes but now has application only up to 40 grammes. The minimum sentence remains at 5 years and 5 strokes and the minimum sentence for possession of 40 grammes is now 20 years and 15 strokes. We therefore suggest a new tariff setting out a pattern of progressive sentences, following the approach in *Othman's* case.

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 Respondent in this matter was convicted of possession of 22.8414 grammes of Methylamphetamine, his sentence would fall in the lower range of the 20 to 30 grammes band. He would, however, have been entitled to have taken into account the inordinate delay which occurred at this trial. The Respondent was charged on 25th July 2002. The hearing, due it appears, to adjournments because of the unavailability of Counsel, both prosecution and defence, took just under 1 year and 4 months, almost another 8 months then elapsed before conviction and delivery of sentence on 1st May 2005. We appreciate that the Respondent was on bail but such delays must place an almost intolerable strain on an accused and cannot be countenanced.

This matter need not be further canvassed. We are satisfied that, given the above and the fact that neither Judge nor prosecuting counsel adverted, at the time of sentencing, to the increased penalties for possession for trafficking justice would not be served by our interfering with the sentence imposed.

Madam Aldila submitted further that it was inappropriate for a court to impose the minimum sentence after a contested trial. Having regard to what we have just said we do not think it appropriate in this case to deal with that question but leave it open for future consideration.

The application is dismissed.

Application dismissed