

MUNTAHAR

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 14 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

2 June 2021

Headnote: Sentence – Possession of 12 \$10,000 counterfeit notes being smuggled through Brunei airport – 6 year starting point approved – Credit given for time spent in custody prior to sentencing

Applicant in person

DPP Muhammad Qamarul Affyian bin Abdul Rahman of Public Prosecutor for Respondent

Cases cited in the judgment

Sulaiman Bin Mat Yassin v PP in 2019

Burrell, P.:

On 10 December 2019 the applicant pleaded guilty before Judge Faisal in the Intermediate Court to a single charge under S.489C of the Penal Code Chapter 22, possession of counterfeit money. After considering the agreed facts and the defendant's mitigation the judge selected a starting point of 6 years' imprisonment which he then reduced by one third to reflect the plea of guilty and other mitigation and thus passed a final sentence of 4 years' imprisonment.

The applicant now appeals against that sentence. The notice of appeal was filed approximately one month out of time. The applicant has provided an explanation for the lateness to this court. We will first of all consider the merits of the appeal.

S.489C of the Penal Code concerns the possession of counterfeit currency notes. In this case, it is an agreed fact that on 17th November 2019 the applicant was found to be in possession of twelve BND\$10,000 whilst at Brunei International Airport. He had just flown in from Jakarta and the notes were discovered during a search of his luggage. He informed the authorities that he had obtained the notes from a friend and brought them to Brunei in order to change them into Indonesian Rupiahs.

In mitigation, both in a written statement and to this court, the applicant asks for a reduction in sentence, primarily because of the financial and family hardship that has resulted since his arrest. He has a wife, children and parents in Indonesia who are inevitably suffering due to his absence. In further mitigation the sentencing Court noted that the appellant pleaded guilty at the earliest opportunity and has a clear record in Brunei.

Sentence

The maximum sentence under S.489C is 10 years imprisonment. Sentences passed in previous cases have varied considerably depending on factors such as the role of the offender, the amount of money involved and the face value of the notes.

Consequently, this case must be regarded as a more serious example due to the denomination of the notes, the total amount which was \$120,000 and that they were being smuggled into Brunei through the Airport. That the applicant is an Indonesian national who entered Brunei for the sole purpose of committing this offence is a further aggravating factor.

In the appeal of ***Sulaiman Bin Mat Yassin v PP in 2019***, this Court observed as follows:

“Our attention has been drawn to a number of decisions of the Bruneian and Singaporean Courts which of course vary according to the circumstances of the offences and of the defendant concerned. It is of some relevance that from these a general picture emerges of sentences of imprisonment ranging from 3 to 5 years with most sentences running concurrently for offences under section 489 A, B and C or their equivalent in the Singaporean jurisdiction.”

The sentences referred to were after pleas of guilty. Compared to other cases referred to us by the respondent in their written submission and those noted by the judge when sentencing, this case is clearly at the more serious end of the scale.

Decision

Having regard to all the circumstances of the case including all matters urged in mitigation, we consider the starting point of 6 years' imprisonment to be entirely appropriate. This was correctly discounted to 4 years' imprisonment to reflect the appellant's early plea of guilty. As we find there to be no merit in this case, it is unnecessary to consider the explanation put forward for the one month lateness in filing the notice of appeal.

Finally, the warrant of commitment states that the sentence shall be “w.e.f 10/12/2019” this was the date he appeared in the Intermediate Court. However, he had been remanded since 19 November 2019. We see no reason why the sentence should not commence from the earlier date.

Order

Leave to appeal refused, save that the 4 years' sentence shall be with effect from 19 November 2019.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A