

SERIMAN BIN SULAIMAN

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Motion No. 14 of 2022)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of hearing: 10th November 2022

Date of judgement: 24th November 2022

Appellant in person

PO Shamsuddin bin Hj Kamaluddin and PO Syazwani binti Jumat for Respondent

Seagroatt, JA.:

This 42 year old applicant was convicted of 3 counts after trial on the 15th February 2021 before Judge Masni in the Intermediate Court.

The offences concerned were housebreaking by night in early January 2020, a second offence of housebreaking by night in late December 2019 – both offences being contrary to s.457 of the Penal Code – and, in early January 2020, one offence of causing mischief in the same house as the first offence. This took the form of damage to an ornament and filing cabinet.

The sentences imposed on the 3rd March 2021 for these offences were as follows:

- i. For the first housebreaking offences (being the dwelling of Dalton Michael Worms) the sentence was one of 3 ½ years and 2 strokes.
- ii. For the second housebreaking offence (being the dwelling of Damian Francis Brady) the sentence was also one of 3 ½ years and 2 strokes.
- iii. For the offence of mischief in the form of wrongful damage in the house of the owner in the first offence the sentence was 6 months imprisonment.

He had pleaded guilty to an offence (the 7th charge) before his trial being an offence of disposing of stolen property by changing USD\$680 into Bruneian currency. For this a sentence of 12 months imprisonment was imposed (s.414).

Notice of Appeal

This is dated 23rd May 2022 approximately 14 months out of time. This calls for some explanation but in accordance with our long-standing practice we will consider the merits of the appeal first.

The Sentences

The judge ordered the sentences for the first s.457 offence and the offence of mischief (criminal damage) to run concurrently – they arose out of the same housebreaking offence – but consecutively to the sentences on the other section 457 offence and that under section 414. (3 ½ years and 2 strokes and 12 months respectively)

Then it appears that she made some adjustment in totality by making 2 ½ years of the first concurrent total of 3 ½ years, run consecutively to 2 years of the 3 ½ year term for the second s.457 offence, totaling 4 ½ years, and then made the 12 month term consecutive to the 4 ½ years in total making 5 years and 6 months, plus 4 strokes.

On the same day as Judge Masni delivered the above sentences, she imposed the sentences for a number of offences to which the appellant had already pleaded guilty.

There were 5 in number all committed whilst on bail for the earlier offences. That is an aggravating feature of his offending. No mention of this was made in the judge's decision. The following were the initial groups of sentences:

- a) Described as 2nd and 5th charges in the record, both under s.451, they related to house trespass with intent to steal, committed in July 2020.
- b) Described as the 3rd and 6th charges, both under s.451, the first being a housebreaking offence, and the second an attempted housebreaking offence, both being committed in July 2020 also.
- c) Described as 7th charge under s.403 being dishonest appropriation of property including 3 watches, a JBL speaker, a bottle of Chivas Regal Whisky and other items. In short he stole these items having come across a plastic bag at the back of a house, containing those items. This was also in July 2020. He was arrested shortly afterwards his behaviour being regarded as suspicious. The items were recovered.

For the offences under (a) above and the 6th charge in (b) she imposed 2 years imprisonment on each plus 2 strokes on the 6th charge; for the 3rd charge in (b) she ordered 1 year imprisonment plus 1 (one) stroke; and for the 7th charge (in(c)) the penalty was 8 months imprisonment. These had been discounted by one-third to reflect the pleas of guilty.

The sentences on the 2nd and 3rd charges were consecutive to each other, totalling 3 years and 1 stroke, but concurrent with the sentences on the other charges making a total of 3 years and 1 stroke.

The initial order included 2 strokes but in the final sum it became 1(one)]. The judge then decided to add the total of the sentences in respect of the trial (and the one charge to which he pleaded guilty) i.e 5 years and 6 months plus 4 strokes, to the sentence of 3 years and 1 stroke, thus making a grand total of 8 years and 7 months and 5 strokes. The extra month is the period of imprisonment in default of payment of the compensation ordered in the sum of \$155 to be paid to Mr. Dalton Worms for the damage caused to his property.

Although the convictions after trial did not afford the appellant any discount on sentence and the pleas of guilty in the second group of offences clearly did, it is still necessary to review the totality result. It is still too high in our view. He has no previous convictions. We therefore make the 12 months sentence (the currency offence to which he had pleaded guilty at the outset) concurrent with the other sentences.

We are satisfied with his explanation for the lateness of the Notice of Appeal.

The appeal is allowed to the extent that we substitute an overall sentence of 7 years and 7 months and 5 strokes.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A