

Muhd Munawarah Bin Haji Abd Kadir

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 14 of 2023)**

Steven Chong, C.J.; Seagroatt and Woolley, JJA

Date of Hearing: 11th June, 2024.

Date of Judgment: 18th June, 2024.

Criminal law – Theft and mischief causing disruption to key service – Sentence

Applicant In Person.

PO Nurhidayatul Aeny Alisah Hj Zullizam for Public Prosecutor.

Steven Chong, C.J.:

Introduction

On 3 January 2022 in the intermediate Court the applicant pleaded guilty to two charges under the Penal Code: theft of copper cables causing disruption to telecommunication service contrary to section 380B; and mischief by cutting the copper cables contrary to section 427B.

The Judge sentenced the applicant to an aggregate sentence of 5 years 4 months' imprisonment and 6 strokes.

The applicant applies for an extension of time to appeal against that sentence.

The facts

On 18 November 2021 at about midnight the applicant and seven other men gathered at a house to plan the theft of copper cables belonging to United National Networks (UNN) located in Kampong Sungai Kebun. They intended to sell the copper cables to a scrapyards.

The eight men walked to the UNN site equipped with tools for pulling and cutting the copper cables. They entered the site through a hole in the fence and succeeded in prying open two manhole covers. Although the manholes were filled with water they managed to pull out and cut away 40.5 metres of copper cables and 4 metres of fiber optic cables.

Outside the fence, while two of the men were cutting up the cables into shorter pieces to be carried away, they saw a car approaching the site. All eight men fled the scene and went home.

The applicant and three others were subsequently arrested following police investigations.

A report from UNN showed that the theft caused damages amounting to \$2,831.31 and "downtime" to 278 of their customers.

The sentence

The Judge took a starting point sentence of 8 years' imprisonment and 6 strokes and reduced this to 5 years 4 months' imprisonment and 6 strokes for the guilty plea on the theft charge.

As to the mischief charge the Judge took a starting point sentence of 7 years' imprisonment and 6 strokes and reduced this to 4 years' imprisonment and 6 strokes for the guilty plea.

The Judge ordered the sentences of imprisonment to run concurrently and the strokes to be non-cumulative resulting in a sentence in totality of 5 years 4 months' imprisonment and 6 strokes.

The appeal

The applicant contends that the sentence is too high considering his guilty plea, clear record and co-operation with the police after arrest.

In response the Public Prosecutor submits that the sentences of imprisonment individually and in totality are not excessive but concedes the Judge erred in not reducing the strokes from 6 to 4 for the guilty plea.

The crux of the submission is that a severe sentence was justified because of the prevalence of offences of this nature and the harm they cause. Statistics from UNN show that between 2020 and 2022 there were 185 thefts of telecommunication cables causing a loss of \$939,629.04. One incident alone in 2021 resulted in telecommunication service outage affecting 100,000 customers.

Decision

Deterrence must be the dominant sentencing consideration when it comes to offences of theft and mischief causing disruption to key services to the general public.

This was a case of high culpability and harm. The high culpability factors were the applicant's participation in the planning and preparation for the theft and the significant role he played in the commission of the offence. At various stages he acted as a lookout. He was also involved in entering the manholes to pull the cables out and in cutting them. Turning to the harm caused the theft resulted in financial loss to UNN and disruption of telecommunication service to a substantial number of customers

We are satisfied there is no arguable basis that the sentence of imprisonment imposed was manifestly excessive.

However, since the Public Prosecutor has conceded the sentence of 6 strokes should be reduced to 4 strokes to reflect the guilty plea we grant leave to appeal.

We treat this hearing as the hearing of the substantive appeal. The sentence of imprisonment of 5 years 4 months is to remain but the 6 strokes is quashed and substituted with 4 strokes.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.