

FERRY PENGIRAN
AND
PUBLIC PROSECUTOR

Court of Appeal of Brunei Darussalam
(Criminal Motion No. 15 of 2020)

Before: Burrell P, Seagroatt and Lunn JJ A.
12th November 2022

Headnote: Sentence, multiple housebreaking by night (s.457 Cap 22), 17 pleas of guilty. Planned professional criminal activity. Starting point of 15 years reduced to 13 years 6 months. Final sentence 9 years and 5 strokes.

Applicant in person
DPP Dayangku Didi-Nuraza binti Pengiran Haji Abdul Latiff for Respondent

Cases cited in the judgment

Azman@Asrol bin Jaya v Public Prosecutor [2011] 2 JCBD
Abdul Faiz bin Zaidan v Public Prosecutor (Criminal Appeal No 17 of 2015)

Burrell, P.:

This is an application for leave to appeal out of time against a sentence of 10 years imprisonment and 6 strokes imposed by the Honourable Chief Justice Steven Chong in October 2019. The applicant had on an earlier date pleaded guilty to 17 charges of housebreaking by night contrary to s.457 of CAP 22.

The applicant's notice of appeal is dated 25th February 2020 and is therefore out of time by over 3 months.

Leave to appeal out of time will only be granted if a reasonable excuse or explanation is provided for the delay in serving the notice and if there is a reasonable prospect of the appeal succeeding.

Following our usual practice we will firstly consider the merits of the appeal. Only if there is some merit in the proposed appeal will the need arise to consider the explanation for the 3 month delay in serving the notice which, in this case, is that his family was unaware of the time limits.

Facts

The outline facts of this case which were admitted by the applicant were as follows.

Between January and August in 2019 the applicant entered Brunei from Malaysia as a visitor and on 17 separate occasions broke into dwellings by night to steal property. It is clear that he targeted the dwellings in advance and selected properties which could be accessed through windows which could be easily reached. Some of the properties were the official residences of foreign ambassadors. He carried with him a screwdriver and a cutter to facilitate entry if necessary.

Most of the properties were unoccupied at the time of the break-in, but not always. For example, in charge 7 he was stealing from a house when one of the occupants woke up and screamed when she saw the intruder leaving. In charge 11 there was a child asleep in a room which the applicant entered.

The nature of the property stolen was of easily disposable goods. For example, cash, mobile phones, watches, cameras, laptops, sunglasses, wallets, bank cards, jewellery, documents, car keys and a tool box. Almost none of the stolen property was recovered. Presumably he had sold the items for whatever he could get for them. No valuations of the stolen property has been provided. Wherever possible it should be.

Sentence

The serious aspect of this case is the number of offences. Over a period of about 7 months 17 properties were invaded at night by a single intruder who had planned his crimes in advance and was equipped with tools to gain access. He had entered Brunei from Malaysia on each occasion and because he continued his nefarious activities over a long period he cannot rely on "positive good character" when being sentenced even though there are no previous convictions recorded against him in Brunei or in Malaysia.

When sentencing the Chief Justice observed that the applicant was 27 years old and that he was a married man with two young children. He also gave the applicant credit for pleading guilty to all 17 charges against him.

It is well established and supported by an abundance of authority that for a single offence contrary to s.457 a starting point of 5 years imprisonment with strokes is merited.

In this case the Chief Justice selected 5 years and 5 strokes as the proper starting point for each charge. He then reduced each term to 3 years and 4 months with 3 strokes to reflect the applicant's pleas of guilty.

He then considered the number of offence involved and the question of totality and concluded that the sentences on the first three charges should be served consecutively with the remaining 14 charges to be served concurrently. The strokes on charges 1 and 2 to be cumulative whilst the remaining strokes non-cumulative. The final sentence was therefore 10 years imprisonment and 6 strokes.

Merits

The sentence of 5 years and 5 strokes is entirely appropriate for the individual charges. Breaking into people's private property at night time to steal whatever can be found is serious criminal conduct and potentially a very frightening and disturbing event for the householder.

The issue in this case is totality. The Chief Justice said as his concluding remarks-

"I have borne in mind the impact of a long sentence on a foreign defendant whose family members may face difficulty making prison visits. But the gravity of the offences warrants a severe sentence. A sentence of 15 years would have been imposed had the defendant been convicted after a trial."

In support he referred to a 2011 case *Azman@Asrol bin Jaya v Public Prosecutor [2011] 2 JCBD* in which a sentence of 9 years and one month with 8 strokes was upheld on appeal for guilty pleas to 14 offences which included, but were not exclusively s.457 offences. The number of housebreaking by night offences remains high in Brunei since 2011.

Our concern in this appeal relates solely to the question of totality. These are undoubtedly serious offences which warrant a deterrent sentence.

In *Abdul Faiz bin Zaidan v Public Prosecutor (Criminal Appeal No 17 of 2015)* Mortimer P. reviewed the question of the appropriate starting point in cases of multiple housebreaking by night. At the outset we repeat his remark that *"rarely are 2 cases completely comparable."* However, what can be gleaned from this case is that, in 2015, 12 years for an offence with clear similarities to the present one was regarded as a high starting point.

Nonetheless, we further acknowledge 2 factors to weigh in the balance. Firstly, the present case is arguably more serious on its facts and secondly 7 years has passed since the above decision and the need for deterrence persists as there is little or no evidence that the commission of such offences is on the decline.

We therefore think that a higher starting point than 12 years is now warranted but that an increase to 15 years, or about 25% is excessive.

We have concluded that a final sentence of 9 years is proper for all these offences. 13 years and 6 months would have been appropriate after trial. We will make a commensurate reduction in the number of strokes from 6 to 5.

Decision

The individual sentence for each offence shall remain. The sentence on charges 1 and 2 shall be consecutive together with 28 months of the sentence on charge 3, also to be consecutive making a total of 9 years imprisonment. All remaining sentences to be served concurrently. 2 of the strokes on charge 2 shall be cumulative to the 3 strokes on charge 1, making 5 in total. All remaining strokes to be non-cumulative.

The appeal is allowed in part the application to appeal out of time is therefore granted and in accordance with the above "Decision".

Burrell, P.

Seagroatt, J.A.

Lunn, J.A