

Rosazli Bin Haji Metassan

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 15 of 2023)**

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

Date of Hearing: 8th June, 2024.

Date of Judgment: 19th June, 2024.

Criminal law – House-breaking by night to commit theft – Retaining stolen property - Sentence

Applicant In Person.

PO Ahmad Firdaus and PO Sabrina Hj Mahmud for Public Prosecutor.

Case cited:

Shamsuddin Bin Mohammad v Public Prosecutor [2014] 1 JCBD 241.

Steven Chong, C.J.:

Introduction

On 6 March 2023 in the Intermediate Court the applicant pleaded guilty to three charges under the Penal Code: one charge of house-breaking by night to commit theft contrary to section 457 (1st Charge) and two charges of retaining stolen property contrary to section 411 (4th and 5th Charges).

The applicant had initially claimed trial to five charges including these three charges but changed his plea after the prosecution withdrew two charges upon his representation, one for house-breaking by night to commit theft contrary to section 457 (2nd Charge) and the other for theft contrary to section 379 (3rd Charge).

Judge Radin Safiee Bin Radin Mas Basiuni sentenced the applicant to an aggregate sentence of 5 years 6 months' imprisonment and 2 strokes.

The applicant seeks leave to appeal out of time against that sentence.

The facts

Briefly summarized and in chronological order the facts are as follows.

4th Charge

On the morning of 10 December 2021 the owner of a Mitsubishi Lancer found his car missing from the garage of his house in Kampong Delima Satu and made a police report.

Police investigations led to the recovery of the car from the garage of a house belonging to the applicant's friend about a week after the theft. When interviewed by the police after arrest the applicant admitted he had driven the car to the garage of his friend's house on 13 December 2021. The two of them had dismantled the tyres and battery of the car.

1st Charge

On the night of 10 December 2021 the applicant and an accomplice went to a house in Mukim Liang to commit theft. The applicant parked his car at a distance and walked to the house. After prying open a kitchen window the applicant took off his boots and handed them to his accomplice who acted as a lookout while he entered the house.

Inside the house the applicant took a Dell laptop, several branded handbags, watches, gold and silver bars, cash and car keys before leaving through the back door. Outside the house he used one of the car keys to unlock the door of a Mazda 3 and started the car but was unable to drive off leaving the engine running. The duo then ran to applicant's car and fled the scene.

The theft was discovered by the owner the next morning and a police report was made.

5th Charge

In the early hours of 15 December 2021 the owner of a Yamaha motorcycle was woken up by his mother after she found the sliding door of their house in Kampong Pandan, Kuala Belait, had been forced open. He made a police report after discovering the theft of the Yamaha and its key.

He found the Yamaha abandoned in the bushes near his house the next day. Police investigations led to the arrest of the applicant and he was found in possession of the Yamaha key.

Previous convictions

The applicant is a prolific offender with 25 previous convictions for theft related offences, including house-breaking by night to commit theft and retaining stolen property, and for drug consumption offences, the first committed in 2000 and the most recent in 2021.

The sentence

The Judge reduced the starting point sentences by one fifth instead of the usual one third for the applicant's guilty plea to the charges because they were entered on the eve of the trial.

Concurrent sentences were ordered in relation to the retaining of stolen property offences and the sentence in relation to the house-breaking offence was ordered to be consecutive resulting in a total of 5 years 6 months' imprisonment and 2 strokes.

The appeal

The applicant aged 42 appeals against the sentence on the ground that it is too high. He says his parents are elderly and his mother wants him home.

Decision

House-breaking by night to commit theft offences are treated seriously and in a typical case a sentence of up to 5 years' imprisonment may be upheld by the court because of the fear and distress caused to home owners: see the decision of this court in *Shamsuddin Bin Mohammad v Public Prosecutor* [2014] 1 JCBD 241.

The Judge was entitled to adjust the reduction in the starting point sentence from one third to one fifth accorded to the applicant for pleading guilty since it came late in the day.

Considering the applicant's antecedent history of serious offending and the multiplicity of offences there is no arguable basis for contending that the sentence is excessive.

For these reasons the application is dismissed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.