

**KUA CHIN MIN**

**AND**

**PUBLIC PROSECUTOR**

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**Court of Appeal of Brunei Darussalam  
(Criminal Motion No. 16 of 2021)**

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Before: Burrell P, Seagroatt and Lunn JJ A.

**30 June 2021**

*Headnote: sentence: time spent in custody prior to sentence to be taken into account save in exceptional circumstances – 18 months imprisonment for single car theft reduced to 12 months.*

Appellant in person

DPP Aminuddin Zaki bin Dato Hj Abdul Rahman & PO Hajah Siti Mu'izzah binti Hj Sabli for Public Prosecutor

**Burrell, P.:**

On a charge sheet dated 20 July 2020, this applicant is named as D6 out of 13 defendants. He faced a single charge, the 6<sup>th</sup> charge, out of a total of 23. The 20 July 2020 charge sheet was an amendment and revision of two earlier charge sheets, both of which named the same 13 defendants. One dated 1 August 2019 had 29 charges and one dated 2 February 2019 had 45 charges. In all charge sheets this applicant's solitary appearance was on charge 6, the theft of a motor car, a Toyota Prado, contrary to s.379 of the Penal Code Chapter 22 with 3 other defendants on 10 July 2018.

He was convicted after trial before Judge Faisal in the Intermediate Court on 28 November 2020. One co-accused was acquitted, one pleaded guilty and the last one was also convicted.

This applicant was sentenced to 18 months imprisonment. He now seeks leave to appeal against that sentence.

**Facts**

The facts as found to be proved by the judge can be briefly stated. The applicant was the driver of a vehicle with 3 other co-defendants. As part of a pre-arranged plan they tailed a Toyota Prado

(the car subsequently stolen) to a construction site at Kg Kiarong. A little later one his passengers went to the Toyota, in possession of a key which had been stolen in an earlier incident not involving this applicant. The Toyota was then stolen.

It was the prosecution case that this was the work of a car stealing syndicate of which this applicant was a member. The stolen vehicle was never recovered.

### **Delay**

The Notice of Appeal has been filed 4 months out of time. The Notice was filed by his wife on 5 April 2021. In court the applicant's explanation was that he did not know that he could appeal.

We shall consider the merits of the appeal before addressing the adequacy of this explanation.

### **Sentence**

In the course of the hearing two matters were advanced by the applicant which are relevant to sentence.

First, the applicant was in custody from the date of his arrest on 17 September 2018 until 12 January 2019, almost 4 months. This fact was not brought to the attention of the sentencing judge, it was not taken into account when sentencing and it was not dealt with in the respondent's written submissions.

Secondly, the applicant informed this court that he wanted to plead guilty at trial. The record shows that on 2 February 2019 a plea of not guilty is recorded. The trial commenced in July 2020 on that basis. However, the applicant was unrepresented throughout, he asked no questions of any prosecution witnesses, he elected not to give evidence and he complained to this court that there was no Chinese Interpreter throughout the proceedings. This court has had the benefit of a Chinese Interpreter.

When the time come to mitigate, after conviction, the record shows the applicant as saying, "I plead guilty to this offence."

### **Appeal**

With the above matters in mind the approach to sentence should be as follows:

- (i) The applicant is a 49 year old Malaysian citizen, resident in Brunei, with a young family. He appeared to play an entirely passive role in the trial involving his co-accused. We note that he barely spoke throughout the whole trial, other than to say he had no questions or to elect not to give evidence, until the very end when he said he "pleaded guilty."
- (ii) The fact that the car was never recovered and was stolen as a part of a pre-arranged plan is an aggravating factor.

(iii) In these unusual circumstances we consider that 15 months imprisonment was the correct starting point which, in this case because of (i) above we discount further to 12 months imprisonment.

(iv) The nearly 4 months spent in custody should be taken into account.

**Delay**

There is merit in the appeal. We accept his explanation for the delay that he was ignorant of his rights and that the appeal procedure was eventually commenced by his wife.

**Order**

Leave to appeal is granted. We treat the application as the appeal. We quash the sentence of 18 months imprisonment and substitute a sentence of 12 months imprisonment to be served with effect from 2 August 2020.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**